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THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. HO-13388-A
)
KIK INTERACTIVE)

WITNESS: Eileen Lyon

PAGES: 1 through 161

PLACE: U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

DATE: Thursday, August 30, 2018

The above-entitled matter came on for hearing,
pursuant to notice, at 9:45 a.m.

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<p style="text-align: center;">Page 2</p> <p>1 APPEARANCES: 2 On behalf of the Securities and Exchange Commission: 3 BRENT MITCHELL, ESQ. 4 JAMES MURTHA, ESQ. 5 JEFF LEASURE, ESQ. 6 STEPHAN SCHLEGELMILCH, ESQ. 7 DAVID MENDEL, ESQ. 8 Securities and Exchange Commission 9 100 F Street, N.E. 10 Washington, D.C. 20549 11 (202)551-4683 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: center;">Page 4</p> <p>1 C O N T E N T S 2 WITNESS: EXAMINATION 3 Eileen Lyon 5 4 5 EXHIBITS DESCRIPTION IDENTIFIED 6 130 Subpoena 7 7 131 Resume 10 8 132 Charts 40 9 133 Charts 41 10 134 Memorandum 64 11 135 Chart 67 12 136 Spreadsheet 70 13 137 E-mail Chain 90 14 138 Letter 95 15 139 Attachment 96 16 140 E-mail Chain 99 17 141 E-mail Chain 108 18 142 E-mail Chain 110 19 143 E-mail Chain 115 20 144 E-mail Chain 119 21 22 23 24 25</p>
<p style="text-align: center;">Page 3</p> <p>1 APPEARANCES(CONT.) 2 3 On behalf of the Witness: 4 LUKE CADIGAN, ESQ. 5 BRETT DEJARNETTE, ESQ. 6 PATRICK GIBBS, ESQ. 7 Cooley LLP 8 500 Boylston Street 9 Boston, Massachusetts 02116 10 617.937.2480 11 KENNETH LENCH, ESQ. 12 Kirkland & Ellis 13 655 Fifteenth Street, N.W. 14 Washington, D.C. 20005 15 202.879.5270 16 17 Also Present: 18 Steven Jones, Videographer 19 Ryan Walker, SEC Intern 20 21 22 23 24 25</p>	<p style="text-align: center;">Page 5</p> <p>1 P R O C E E D I N G S 2 THE VIDEOGRAPHER: Good morning this begins 3 disc number one. We are on the record at 9:45 a.m. 4 MR. MITCHELL: Ms. Lyon, could you put up 5 your right hand? Do you swear or affirm to tell the 6 truth, the whole truth, and nothing but the truth? 7 THE WITNESS: I do. 8 Whereupon, 9 EILEEN LYON 10 was called as a witness and, having been first duly sworn, 11 was examined and testified as follows: 12 EXAMINATION 13 BY MR. MITCHELL: 14 Q Okay. Can you please state and spell your 15 name for the record? 16 A It's Eileen, E-i-l-e-e-n, Lyon, L-y-o-n. 17 Q Perfect. My name is Brent Mitchell. With 18 me today are Jeff Leasure, James Murtha, David Mendel, 19 and Stephan Schlegelmilch. We are all officers of the 20 Commission for purposes of this proceeding. Also with 21 us today is an SEC intern named Ryan Walker. 22 MR. MITCHELL: Do you have any objection to 23 Ryan being here? 24 MR. CADIGAN: No. 25 BY MR. MITCHELL:</p>

<p style="text-align: center;">Page 6</p> <p>1 Q This is an investigation by the United 2 States Securities and Exchange Commission in the matter 3 of Kik Interactive to determine whether there have been 4 violations of certain provisions of the federal 5 securities laws. However, the facts developed in this 6 investigation might constitute violations in other 7 federal or state, civil or criminal laws.</p> <p>8 Prior to the opening of the record, I gave 9 you a copy of the formal order of investigation in this 10 matter, and it's stapled with the two supplements. It 11 will be on the -- we'll just leave it on the table. 12 It's available to use during the course of the 13 proceeding.</p> <p>14 Ms. Lyon, have you had an opportunity to 15 review the formal order?</p> <p>16 A Yes.</p> <p>17 Q Also, before that, I gave you what has been 18 marked as Exhibit 1. That is the -- it's actually this 19 document right -- it's the Form 1662, the Commission 20 supplemental information form.</p> <p>21 Have you had an opportunity to read 22 Exhibit 1?</p> <p>23 A Yes.</p> <p>24 Q Do you have any questions about it?</p> <p>25 A No.</p>	<p style="text-align: center;">Page 8</p> <p>1 BY MR. MITCHELL: 2 Q A document there that is a -- 3 MR. CADIGAN: Wait. Before we get started, 4 can we -- I just make a comment, actually. 5 MR. MITCHELL: Oh, yeah. 6 MR. CADIGAN: And as we've discussed in our 7 call yesterday, the -- obviously, the active 8 subpoenaing in-house attorney is somewhat irregular but 9 the company, never to be uncooperative, has presented 10 Ms. Lyon today. In looking and anticipating potential 11 questions, obviously, there are a lot of potential 12 privilege issues. Almost all of Ms. Lyons' knowledge 13 comes based upon her communications with outside 14 counsel or in her role as in-house counsel, 15 communications with Kik employees. All of that would 16 be privileged. 17 But in addition, any questions that might 18 be reserved for other witnesses or might be appropriate 19 for other witnesses, they get into her mental 20 impressions, her motivations, her understandings, why 21 she did something, would she have thought of something 22 of the like would also be off limits. 23 And as we discussed yesterday with that, I 24 think any, you know, well-crafted questions hopefully 25 would -- you know, we're, obviously, presenting her to</p>
<p style="text-align: center;">Page 7</p> <p>1 Q Are you represented today by counsel?</p> <p>2 A Yes, I am.</p> <p>3 MR. MITCHELL: Could your counsel identify 4 themselves or in groups or however you want to do it?</p> <p>5 MR. CADIGAN: Luke Cadigan of Cooley, LLP 6 for the witness, Ms. Lyon and Kik.</p> <p>7 MR. GIBBS: Patrick Gibbs from Cooley, also 8 for the witness and then Kik.</p> <p>9 MR. LENCH: Kenneth Lench, Kirkland & 10 Ellis, LLP, representing the witness today.</p> <p>11 MR. DEJARNETTE: Brett DeJarnette from 12 Cooley on behalf of the witness and Kik.</p> <p>13 MR. MITCHELL: Okay. Can you -- Cooley 14 also represents some other people.</p> <p>15 Can we just put that on the record?</p> <p>16 MR. DEJARNETTE: So Cooley and Kirkland 17 collectively represent Kik, Ted Livingston, Peter 18 Heinke, Tanner Philp, and Phil Yang. Cooley represents 19 Erin Clift, Eran Ben-Ari, Fred Wilson, and Union Square 20 Ventures.</p> <p>21 BY MR. MITCHELL:</p> <p>22 Q Okay. Before we went on the record, we 23 also marked as Exhibit 130.</p> <p>24 (SEC Exhibit No. 130 was marked for 25 identification.)</p>	<p style="text-align: center;">Page 9</p> <p>1 be able to allow you to ask questions and get around it 2 and not get into those issues.</p> <p>3 To the extent she's here today, obviously, 4 you know, she has no intention, as we discussed 5 yesterday, of making any waiver of the attorney-client 6 privilege. Any discussion there that we get into, that 7 would be inadvertent. She actually has no authority on 8 behalf of the company to waive, and I believe that 9 we've discussed that you're not intending to use 10 anything that she says here to be a broader waiver or 11 broad waiver of any attorney-client privilege or any 12 waiver of the attorney-client privilege.</p> <p>13 MR. MITCHELL: Right. In terms of the 14 issue of authority, we have -- we -- I think we agree. 15 We understand that she doesn't have the authority. 16 We're going to talk to her today, and, likely, the 17 questions and answers we do today will just be what 18 they are.</p> <p>19 MR. CADIGAN: Okay.</p> <p>20 MR. MITCHELL: On the issue of the rest of 21 it, we'll just -- my suggestion is we'll just do it 22 question by question and see how things go.</p> <p>23 MR. CADIGAN: Yeah. Okay.</p> <p>24 MR. MITCHELL: Good?</p> <p>25 MR. CADIGAN: That's good.</p>

<p style="text-align: right;">Page 10</p> <p>1 BY MR. MITCHELL:</p> <p>2 Q Okay. Ms. Lyon, is Exhibit 130 a copy of</p> <p>3 the subpoena you are appearing pursuant to here today?</p> <p>4 A It appears to be.</p> <p>5 Q Okay. So what I'm going to do is just</p> <p>6 clean these up, and I'll leave them on the counter -- I</p> <p>7 mean, leave them on the table here in case you want to</p> <p>8 see them later.</p> <p>9 A Okay.</p> <p>10 Q So I'm going to ask you to sort of just to</p> <p>11 run through at a resume level your education and jobs</p> <p>12 after high school. And to make that more efficient, I</p> <p>13 have marked Exhibit 131.</p> <p>14 (SEC Exhibit No. 131 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. MITCHELL:</p> <p>17 Q Which I think is a copy of your resume. It</p> <p>18 is a double-paged document with the Bates number</p> <p>19 KIK_foundation_cap_003440 to 401.</p> <p>20 A Okay.</p> <p>21 Q Have you had a chance to look at it?</p> <p>22 A Yes.</p> <p>23 Q What is it?</p> <p>24 A This appears to be my resume as a lawyer.</p> <p>25 It doesn't actually cover everything since high school.</p>	<p style="text-align: right;">Page 12</p> <p>1 National Bank. And I was their chief legal officer,</p> <p>2 also had responsibility for compliance as well as the</p> <p>3 Bank Secrecy Act and anti-money laundering program.</p> <p>4 And then when I left that firm in 2012, I</p> <p>5 went to a small law firm in Los Angeles that did a lot</p> <p>6 of merger and acquisition activity involving community</p> <p>7 banks. And at that time, I met the people from Kik --</p> <p>8 actually, the CFO briefly through an introduction from</p> <p>9 the Cooley firm. And I didn't really do much work for</p> <p>10 them at that time. But after I was at King Holmes, I</p> <p>11 was hired to be general counsel at Citizens Business</p> <p>12 Bank and its parent company, CVB Financial, and I was</p> <p>13 there for about a year when I left.</p> <p>14 And after that period of time, I was</p> <p>15 thinking about what I would want to do next. So I</p> <p>16 spoke with my colleague at Cooley. And she mentioned</p> <p>17 that Kik might want to have somebody with my background</p> <p>18 be their general counsel. But I was committed to</p> <p>19 working on a merger transaction with -- oh, I can't</p> <p>20 even remember the bank. It was a friend of mine, but</p> <p>21 they were being acquired by PacWestern and they needed</p> <p>22 to close the deal.</p> <p>23 So I committed to work for her for a few</p> <p>24 months part time. And so I started with Kik on a</p> <p>25 part-time basis until October. And in October, I</p>
<p style="text-align: right;">Page 11</p> <p>1 Q Sure.</p> <p>2 A But what would you like to know?</p> <p>3 Q Well, I guess, if you -- could you just</p> <p>4 sort of --</p> <p>5 A Start at the beginning?</p> <p>6 Q Well, yeah.</p> <p>7 A Okay.</p> <p>8 Q Start with college and what you did and --</p> <p>9 A I went to college at UCLA and studied</p> <p>10 history. And then I worked as a paralegal for a year</p> <p>11 in a small law firm in Los Angeles during which time I</p> <p>12 applied to law school and attended the University of</p> <p>13 Southern California. From there I went to Manatt,</p> <p>14 Phelps, & Phillips, which is a national law firm, and I</p> <p>15 was in their corporate department for 13 years rising</p> <p>16 to the level of partner.</p> <p>17 In 2000, I left the firm and joined</p> <p>18 Hawthorne Savings and its parent company, Hawthorne</p> <p>19 Financial Corporation, as senior vice president general</p> <p>20 counsel and corporate secretary. I was responsible for</p> <p>21 not only the legal affairs, but I also chaired the</p> <p>22 compliance committee there.</p> <p>23 After that, I -- the company was merged</p> <p>24 with another company. So I left there and had a few</p> <p>25 months off until I took a position with Far East</p>	<p style="text-align: right;">Page 13</p> <p>1 started working with Kik full time as their general</p> <p>2 counsel and chief compliance officer.</p> <p>3 Q Okay.</p> <p>4 MR. SCHLEGELMILCH: And that's</p> <p>5 October 2017?</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. MITCHELL:</p> <p>8 Q Sure. I think you said it, but at</p> <p>9 Hawthorne, you chaired a compliance committee?</p> <p>10 A Uh-huh.</p> <p>11 Q What does that mean? What did that entail?</p> <p>12 A Well, banks are subject to a wide range of</p> <p>13 regulatory compliance matters, and we had a compliance</p> <p>14 group. But we determined that it was more efficient</p> <p>15 and effective as a compliance function to outsource it</p> <p>16 to a consulting firm. And I'm trying -- I think we</p> <p>17 used Protiviti for that, and they actually conducted</p> <p>18 the compliance audits. But the compliance committee</p> <p>19 established what the program would be. And I was the</p> <p>20 chair of that -- of that committee.</p> <p>21 So it covered the full range of regulatory</p> <p>22 compliance matters that banks are subject to.</p> <p>23 Q Okay. And at Far East it also -- I think</p> <p>24 your resume also said you restructured the</p> <p>25 reorganization of the broker-dealer affiliate?</p>

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<p>1 A Correct. Gosh, I had forgotten about that. 2 They had a broker-dealer affiliate, and it wasn't 3 really very active. And so my recollection is we took 4 it into a nondeposit investment products affiliate. So 5 taking it from an actual subsidiary to an affiliate 6 that wasn't a registered broker-dealer that did -- 7 because, again, we outsourced the broker-dealer 8 function to -- I can't even remember who that was -- to 9 a, you know, registered broker-dealer. 10 It's common practice among smaller 11 institutions to use a third-party broker-dealer to sell 12 investment products to their clientele. 13 Q But you led that effort to do that kind of 14 restructure? 15 A Yes. 16 Q Okay. So when did you first start working 17 for Kik? 18 A I started working for them, I think, it was 19 in mid-July or early August. Actually, for some 20 reason, the date August 8th comes to mind, but it might 21 have been early July. I know I started talking to them 22 in mid-July. 23 Q Okay. And when you started, you said you 24 were working part time for them and part time for 25 somebody else?</p>	<p>1 making sure I understand between the part time and the 2 full time. 3 When you first started working for them in 4 the summer, who did you report to? 5 A Ted Livingston. 6 Q And has that changed? 7 A No. 8 Q And so during the time -- again, what's the 9 scope of your responsibilities at Kik? 10 A Really all legal matters. And that 11 includes all matters relating to compliance such as it 12 applies to a nonfinancial institution. They do have 13 privacy obligations. GDPR came under my role. 14 Mostly thinking about the consequences of 15 engaging in a token distribution offering and the 16 furthering of the build out of the ecosystem and at 17 every turn because this is very new and it doesn't fall 18 into the established guidelines, you know, really 19 spending time thinking about what the efforts might be 20 and whether or not that would require a licensing as a 21 money transmitter. 22 I also took on in January a role to oversee 23 what we call our trust and safety group. And they do 24 content moderation looking for child sexual abuse 25 material and other abusive material in violations of</p>
<p style="text-align: center;">Page 15</p> <p>1 A Yes. 2 Q Were you affiliated -- 3 A CU Bancorp. 4 Q I'm sorry. What was the name of the bank? 5 A CU Bancorp. 6 Q Okay. And when you were working part time, 7 were you -- what was your, I guess, sort of -- what did 8 you work on? What was the scope of your 9 responsibilities? 10 A Well, they were in the middle of conducting 11 a token distribution event, getting ready for that, and 12 so I spent a lot of time getting up to speed on the 13 work that had been done. I also focused most of my 14 energy on the issue of whether or not Kik was required 15 to be a money services business licensed with the 16 states and registered with FinCEN. And then just 17 whatever other work came my way because they hadn't had 18 a general counsel or in-house counsel for a while. So, 19 you know, what happens is everybody gets wind of that 20 and starts sending you contracts to review. 21 Q Sure. And when you went full time, did the 22 scope of your job change? 23 A Not really. I just had more time to devote 24 to the tasks. 25 Q Okay. And when you -- again, I'm just</p>	<p style="text-align: center;">Page 17</p> <p>1 our terms of service. And I helped -- the idea was 2 that we were going to outsource some of that content 3 moderation. We haven't done that yet. And, in fact, 4 I've -- my role has shifted, and I'm not really 5 responsible for that anymore. 6 Q Okay. You're also Kik's chief compliance 7 officer? 8 A That's the title, but it really is the same 9 as just being general counsel because there really 10 aren't the same kind of compliance obligations that one 11 would have in a financial institution. 12 So as chief compliance officer at a bank, 13 you would necessarily have to work with outside 14 auditors or inside auditors to audit the various -- 15 compliance with various regulations. That's not the 16 sort of thing that happens in the -- in Kik. We just, 17 you know, need to be compliant with privacy regulations 18 and GDPR and responsibility for responding to legal 19 process when that's served in connection with -- you 20 know, about reports about CSAM. 21 Q I apologize. What's CSAM? 22 A It's child sexual abuse material. 23 Q That's what I think of -- it's like a -- 24 it's when a police agency's number contacts Kik and 25 wants documents or things like that?</p>

<p>Page 18</p> <p>1 A Yeah. Right.</p> <p>2 Q Okay. And I apologize. I don't know what</p> <p>3 GDPR is.</p> <p>4 A General -- Gosh, I don't know what the</p> <p>5 actual title is. It's the European regulation on</p> <p>6 privacy protection that was effective May 25th of this</p> <p>7 year and has probably been the reason you've been</p> <p>8 getting all those new privacy notices.</p> <p>9 Q Yeah. Got it.</p> <p>10 So are you sort of -- or other than -- part</p> <p>11 of your job is giving people legal advice?</p> <p>12 A Yeah.</p> <p>13 Q All right. Separate from that, do you have</p> <p>14 any roles where you are responsible for, you know,</p> <p>15 running any compliance programs or any doing anything</p> <p>16 sort of separate from giving legal advice?</p> <p>17 A As I mentioned, I was responsible for</p> <p>18 running the trust and safety program.</p> <p>19 Q Right.</p> <p>20 A And I also -- I have one staff. I have a</p> <p>21 paralegal who reports to me. She spends a lot of her</p> <p>22 time working on IP matters. And we had some</p> <p>23 litigation, so I oversaw litigation. You know, it's</p> <p>24 really just the general legal brief that comes to an</p> <p>25 in-house counsel.</p>	<p>Page 20</p> <p>1 A There was one partner -- I can't think of</p> <p>2 who it was, and I don't know if they actually became a</p> <p>3 partner -- where I spoke with in a group. I -- they</p> <p>4 called and asked about some issues regarding the Kin</p> <p>5 tokens.</p> <p>6 Q Okay. Who's that?</p> <p>7 A I don't remember.</p> <p>8 Q What issues did they want to talk about?</p> <p>9 A Whether we thought the Kin token was a</p> <p>10 security or not.</p> <p>11 Q So who was there on the Kik side?</p> <p>12 A Tanner Philp.</p> <p>13 Q Anybody else?</p> <p>14 A I don't think so. Just Tanner and I.</p> <p>15 Q But you were on the phone?</p> <p>16 A Yes.</p> <p>17 Q What do remember?</p> <p>18 I understand you don't remember the name of</p> <p>19 the company. What do you remember about who was on the</p> <p>20 other side?</p> <p>21 A It was the either the CFO or the CEO of</p> <p>22 that company.</p> <p>23 Q Okay. And what did they ask?</p> <p>24 A You know, we're interested in pursuing a</p> <p>25 partnership with your, you know, company regarding</p>
<p>Page 19</p> <p>1 Q Do you deal with government agencies when</p> <p>2 they contact Kik?</p> <p>3 A If they do contact Kik. Usually -- very</p> <p>4 rarely. I've only seen one or two instances, and that</p> <p>5 was mostly in connection with the legal process. So</p> <p>6 the Royal Canadian Mounted Police or Canadian company,</p> <p>7 they will frequently contact -- be in contact with our</p> <p>8 trust and safety team. They usually handle those</p> <p>9 directly.</p> <p>10 But, once in while, something will arise to</p> <p>11 a level where I have to respond to it or, you know,</p> <p>12 advise about the response to that request.</p> <p>13 Q And do you, like, negotiate for Kik with</p> <p>14 other companies?</p> <p>15 A On occasion. Not generally directly. In</p> <p>16 connection with our partnerships team, you know,</p> <p>17 they -- there have been some negotiations with partners</p> <p>18 regarding how they might work with the -- within the</p> <p>19 ecosystem. But our partnerships team have primarily</p> <p>20 handled those negotiations. I'm in the background,</p> <p>21 handle the contracts, and work generally with the</p> <p>22 business people. Generally, I work with the business</p> <p>23 people, and they negotiate the contacts directly.</p> <p>24 Q Were there any potential partners who you</p> <p>25 dealt with directly?</p>	<p>Page 21</p> <p>1 integrating the Kin token into our platform, but,</p> <p>2 obviously, we've heard all of the news about</p> <p>3 cryptocurrency and we just want to know what your view</p> <p>4 is on whether or not it constitutes a security.</p> <p>5 Q And what did you and Mr. Philp tell them?</p> <p>6 A That we were of the view that it did not</p> <p>7 constitute a security, and that was a view that was</p> <p>8 based on our consultation with outside counsel.</p> <p>9 Q Okay. Did you talk to them about the --</p> <p>10 your reasoning?</p> <p>11 A No.</p> <p>12 Q Then what happened?</p> <p>13 A They -- the call ended, and I don't know if</p> <p>14 we ever resumed. I actually don't know what happened</p> <p>15 with that particular -- because I can't remember which</p> <p>16 partner it was. I don't know if it ever went any</p> <p>17 further.</p> <p>18 Q Were there any other sort of people outside</p> <p>19 of Kik who you've dealt in connection with the Kin</p> <p>20 token offering?</p> <p>21 A How do you mean? I'm not sure I'm</p> <p>22 following.</p> <p>23 Q You said that in terms of partners -- so</p> <p>24 you had talked to this one possible partner.</p> <p>25 Were there any other possible partners who</p>

<p style="text-align: right;">Page 22</p> <p>1 you've talked to?</p> <p>2 A Not that I've talked to, no.</p> <p>3 Q Okay. Beyond partners, is there anyone</p> <p>4 else, are there any other companies outside of Kik that</p> <p>5 you've talked to about the Kin token or the Kin token</p> <p>6 offering?</p> <p>7 A I've talked to some representatives of</p> <p>8 Bittrex which is a token exchange.</p> <p>9 Q Anybody else?</p> <p>10 A I have talked to -- not about the Kin</p> <p>11 token, no. I've talked to Peter Van Valkenburgh and</p> <p>12 Jerry Brito of Coin Center just generally about</p> <p>13 cryptocurrency.</p> <p>14 Q I don't know who they are.</p> <p>15 Who are they?</p> <p>16 A Coin Center is an independent research and</p> <p>17 advocacy organization.</p> <p>18 Q And how did you come to talk to them?</p> <p>19 A We met up in New York during the consensus</p> <p>20 conference.</p> <p>21 Q And what? Did they want to talk to you?</p> <p>22 A No. We just agreed to meet because I</p> <p>23 liked -- we were supporting their organization. We had</p> <p>24 purchased a table at their dinner, and we wanted to</p> <p>25 meet up with them just to, you know, make an</p>	<p style="text-align: right;">Page 24</p> <p>1 Ecosystem Foundation?</p> <p>2 A Oh, yes, I have been helping with the Kin</p> <p>3 Ecosystem Foundation formalizing the organization of</p> <p>4 that and working with their outside counsel, which is</p> <p>5 Borden Ladner and Gervais, a Canadian firm that -- it's</p> <p>6 like one of the Seven Sisters Canadian firms.</p> <p>7 Q And you said you've been working to</p> <p>8 formalize what?</p> <p>9 A The organization of the foundation.</p> <p>10 Because when the TDE occurred, the foundation had been</p> <p>11 incorporated, but it hadn't been organized. So</p> <p>12 incorporation is filing the articles of incorporation.</p> <p>13 And organization is completing the steps that need to</p> <p>14 be taken for a corporation to operate fully such as</p> <p>15 adopting bylaws, organizational resolutions that</p> <p>16 appoint, you know, corporate secretary, president, that</p> <p>17 sort of thing.</p> <p>18 Q Are you in the works -- sorry. The work</p> <p>19 that you're -- in the work on the organizing, are</p> <p>20 you -- who's your client?</p> <p>21 A My -- I work for Kik. I'm Kik's lawyer.</p> <p>22 I'm just facilitating the formation of the foundation</p> <p>23 because it doesn't have its own employees, and Kik</p> <p>24 performs a lot of services for the foundation under its</p> <p>25 services agreement.</p>
<p style="text-align: right;">Page 23</p> <p>1 introduction and see how -- you know, what was new in</p> <p>2 the world of government relations regarding</p> <p>3 cryptocurrencies.</p> <p>4 Q And what did you talk about -- strike.</p> <p>5 Did you end up having a talk with them?</p> <p>6 A We talked generally, yes. And they told us</p> <p>7 what was happening on the hill and what research they</p> <p>8 were doing and how we could support them.</p> <p>9 Q Okay. Anything else?</p> <p>10 A Not that I can remember.</p> <p>11 Q Did you talk about the Kin token</p> <p>12 specifically, the kin token itself?</p> <p>13 A No, I don't think we did.</p> <p>14 Q Okay. So I think we've talked about three</p> <p>15 things the possible partner, Bittrex, and Coin Center.</p> <p>16 Anyone else?</p> <p>17 A There may have been. I just can't --</p> <p>18 nothing comes to mind at the moment.</p> <p>19 Q Okay. I know when you started at Kik you</p> <p>20 also had another client, the bank whose name I've lost.</p> <p>21 A CU Bancorp.</p> <p>22 Q Great. Other than that bank, have you had</p> <p>23 any other clients since you started working for Kik?</p> <p>24 A No.</p> <p>25 Q Have you ever done work for the Kin</p>	<p style="text-align: right;">Page 25</p> <p>1 What time period have you done that, this</p> <p>2 organizational work?</p> <p>3 A Pretty much just since January until --</p> <p>4 it's really only taken off in the last, kind of, two or</p> <p>5 three months.</p> <p>6 Q And Kik bills the foundation for your time?</p> <p>7 A We have a -- yes, essentially. The</p> <p>8 services agreement is a cost-plus. So similar to --</p> <p>9 well, I should say there is a fee that's paid for the</p> <p>10 services plus a percentage that reflects, kind of, the</p> <p>11 market -- the market value of services. Because</p> <p>12 obviously, my services to Kik are lower than these</p> <p>13 gentlemen charge us for their services. But rather</p> <p>14 than do, you know, something similar, it's -- there's</p> <p>15 an add on of, I think, 8 to 10 percent, depending on</p> <p>16 the services. And that was -- we were told to do that</p> <p>17 by KPMG, which is the auditors for the foundation.</p> <p>18 Q 8 to 10 percent on top of what?</p> <p>19 A On top of the cost of services. So there's</p> <p>20 like a time and costs evaluation done generally. It's</p> <p>21 similar to what, I guess, they do in transfer pricing.</p> <p>22 I really didn't handle any of that.</p> <p>23 Q That's fine. I really -- just as a</p> <p>24 practical manner. Do you -- you didn't have to keep</p> <p>25 your time again like you did at a firm?</p>

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1 A No. I haven't been doing that. I'll
2 probably just estimate what it is.

3 Q Okay.

4 A Like in terms of a percentage of my time.

5 Q And then it's -- and then there's a -- that
6 comes up with an hour and then there's a rate that's
7 charged?

8 A Right.

9 Q Okay.

10 A And then a percentage on top of that to
11 account for the general overhead and other things I
12 suppose.

13 Q And has Kik billed the foundation for that
14 yet?

15 A I don't know. It would be something that
16 the accounting department would know.

17 Q But have you submitted any estimates yet
18 for the time that you've spent since January on it?

19 A No, I haven't.

20 MR. MURTHA: Is the foundation a
21 corporation or a not-for-profit?

22 THE WITNESS: It's a corporation that is a
23 not-for-profit corporation.

24 MR. SCHLEGELMILCH: Do you know whether the
25 foundation has any assets other than Kin?

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1 get at that without implicating these issues.

2 MR. SCHLEGELMILCH: We're currently just
3 asking factual questions.

4 MR. CADIGAN: But you're asking those
5 factual questions including the understanding with
6 in-house counsel. And, again, that's Supreme Court
7 case law, very clear --

8 MR. SCHLEGELMILCH: Yes. I read --
9 (Simultaneous speakers.)

10 MR. SCHLEGELMILCH: -- yesterday. The
11 underlying facts aren't privileged.

12 MR. CADIGAN: The underlying facts aren't
13 privileged. But her understanding of that is. And so
14 the -- if you want to get at the facts, you don't need
15 her.

16 MR. SCHLEGELMILCH: You are welcome to
17 instruct not to answer any question you think steps
18 over the line.

19 MR. CADIGAN: Okay. And, again, I want to
20 avoid that. And I also want to avoid having her step
21 out because we want to make sure that she's here to --
22 but when we get into that understanding, you know, it
23 implicates that.

24 And you will have a variety of a number of
25 witnesses. You'll have Mr. Livingston. You'll have a

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1 THE WITNESS: I don't believe it has any
2 assets other than Kin.

3 MR. SCHLEGELMILCH: How -- do you have an
4 understanding of how the corporation will compensate
5 Kik under the services agreement?

6 THE WITNESS: There are -- the board of the
7 foundation, I understand, is considering a few
8 alternatives, including the sale of some Kin or the
9 issuing of some securities backed by the Kin, maybe a
10 note or some sort of a debt instrument to unaffiliated
11 parties. Currently, Kin made a loan -- or Kik made a
12 loan to Kin, and that's supported by a note that bears
13 interest. And so that's currently funding its
14 operation.

15 MR. CADIGAN: I don't want to delay this
16 matter long, but, I mean, I do caution that if there
17 are other witnesses that can answer questions regarding
18 factual matters, you better to get into it, rather than
19 going through her understanding, which, obviously,
20 implicates her mental impressions regarding this. And
21 we'd have to step out each time you ask a question
22 about her understanding as to whether or not, you know,
23 how she received it and what the basis was and whether
24 or not -- and I understand they're basic questions, but
25 there will be a lot of witnesses that might be able to

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1 number of other people. You can ask them all the
2 questions you want to get at the facts.

3 As you've read -- John, I'm sure you've
4 read Sheldon and others -- she's not necessary to get
5 into that. And so there are other ways you can get at
6 the factual issues without getting into the mind of
7 in-house counsel.

8 MR. SCHLEGELMILCH: Okay.

9 BY MR. MITCHELL:

10 Q Who at Kik handles its relationship with
11 the foundation?

12 A Tanner has been very involved in the
13 relationship. Ted Livingston, who is on the board of
14 the foundation, and then myself.

15 Q Okay.

16 A And Brandon Brunet, he is our controller.
17 So probably Neil Brown as well, who is our assistant
18 controller.

19 Q Have you been involved in discussions with
20 people at the Kin -- at the foundation about the
21 foundation's -- you were describing an idea of issuing,
22 like, a debt instrument or something?

23 A Right. That was something that was what
24 the attorneys for the foundation mentioned to me, and I
25 haven't really mentioned it to anybody else. I just

<p>1 recall they threw it out there.</p> <p>2 Q And the loan that you were describing</p> <p>3 earlier from -- it was a loan from Kik to the</p> <p>4 foundation?</p> <p>5 A Yes.</p> <p>6 Q Of -- sorry. Of dollars?</p> <p>7 A Of Canadian dollars, I think.</p> <p>8 Q Canadian, okay.</p> <p>9 And how many? What's the size?</p> <p>10 A It's about 300,000. I don't know</p> <p>11 specifically. I recall that the note specified</p> <p>12 \$269,000. And I believe that there has been some</p> <p>13 additional amounts advanced, but I could be wrong about</p> <p>14 that.</p> <p>15 Q Do you work in Toronto or in Waterloo?</p> <p>16 A No.</p> <p>17 Q Where do you work?</p> <p>18 A I live in Los Angeles, and I work from my</p> <p>19 home office.</p> <p>20 Q And that's been until -- and that's been</p> <p>21 true the whole time you were working at Kik?</p> <p>22 A Yes.</p> <p>23 Q Do you visit Kik's offices?</p> <p>24 A Yes. Yes, I travel there about every six</p> <p>25 weeks.</p>	<p>1 means that it's a digital representation of value.</p> <p>2 Q Okay. And how did you educate yourself</p> <p>3 about the token when you came up?</p> <p>4 A I read a number of things that had been</p> <p>5 published, the white paper, some instructions to token</p> <p>6 purchasers. I actually purchased some tokens. I</p> <p>7 registered myself so I could understand the process,</p> <p>8 not very much money.</p> <p>9 Q In the September --</p> <p>10 A Yeah. In the event. Let's see. I read</p> <p>11 advice from counsel and a lot of e-mail traffic that</p> <p>12 had gone back and forth with counsel regarding the</p> <p>13 token, did my research.</p> <p>14 Q So when you arrived at Kik, where was the</p> <p>15 company sort of in the process of getting to that</p> <p>16 event?</p> <p>17 A It was very close to the token event.</p> <p>18 Q But had there been --</p> <p>19 A Like, within a month after I got there, it</p> <p>20 was launched.</p> <p>21 Q After you got there full time?</p> <p>22 A No, after I got there part time. I got</p> <p>23 there part time in -- I think, it was the first part of</p> <p>24 August. And, you know, by September 12th, the</p> <p>25 registration was open and -- no. Registration had been</p>
<p>1 Q And that's the Waterloo office?</p> <p>2 A Waterloo.</p> <p>3 Q And have you traveled to their office in</p> <p>4 New York?</p> <p>5 A Yes.</p> <p>6 Q For what?</p> <p>7 A Executive meetings. We had a Kin</p> <p>8 ambassador event. I went to consensus, which is a</p> <p>9 cryptocurrency conference, a big conference in New</p> <p>10 York. And during that time period, I visited the</p> <p>11 office.</p> <p>12 Q I think earlier -- I appreciate all this</p> <p>13 background, but we're going to sort of move to the Kin</p> <p>14 token. I think you said earlier that when -- one of</p> <p>15 the things you did when you came on board was sort of</p> <p>16 educate yourself about what -- about the token and what</p> <p>17 was going on with it at the time; is that right?</p> <p>18 A Sure.</p> <p>19 Q So with -- just with everybody, we're just</p> <p>20 sort of getting the basics.</p> <p>21 What is the Kin token?</p> <p>22 A What is the Kin token. The Kin token is a</p> <p>23 cryptocurrency that was based on Ethereum. It's an</p> <p>24 ERC-20 token created by Kik, and ten trillion Kin were</p> <p>25 minted in September of 2017. As I understand it, that</p>	<p>1 open for a month prior to that. And then once the</p> <p>2 token event had been open then, you know, it was open</p> <p>3 for two weeks and people would commit to what amount</p> <p>4 they wanted to purchase.</p> <p>5 Q Sorry. I just want to make sure I</p> <p>6 understand. September 12th is the start of the event?</p> <p>7 A I believe so. I think that's how it worked</p> <p>8 is that you preregistered so that you could purchase in</p> <p>9 the event on the day the event opened. You had two</p> <p>10 weeks to say, I want to buy -- you know, I was</p> <p>11 preregistered for a thousand dollars worth and I am</p> <p>12 going to buy -- you know, okay, I can buy up to \$1,000</p> <p>13 worth or whatever.</p> <p>14 Actually, depending on what people -- how</p> <p>15 many people had registered, there was an amount that</p> <p>16 was -- it was limited to the number of people divided</p> <p>17 by the 125 million that was being offered for sale.</p> <p>18 And so you could register for as much as you wanted,</p> <p>19 but you were only permitted to purchase a certain</p> <p>20 amount.</p> <p>21 Q In that first stage?</p> <p>22 A In that first stage.</p> <p>23 Q Got it. But in that -- September 12th,</p> <p>24 that's the point at which people can say, this is what</p> <p>25 I really want to buy?</p>

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1 A I think that's right, yes.
 2 Q Okay.
 3 A And my recollection is -- I think that's
 4 how that worked.
 5 Q And then -- and that's also the stage where
 6 they would provide -- they had to provide the company
 7 with ether?
 8 A Ether.
 9 Q Okay. And they did that in that stage?
 10 A Yes.
 11 Q Okay.
 12 A Well, yeah. And, technically, I don't know
 13 how -- when you provide the company with ether, I don't
 14 think that any of the ether actually went to the
 15 company until the -- September 26th. I think, because
 16 of the smart contract, it was a process that it would
 17 be held until that time and then it would be issued. I
 18 frankly don't know what the technology on that is.
 19 It's not like an escrow, you know, in a home purchase
 20 or something.
 21 Q Sorry. In what way? What do you mean?
 22 A Well, the whole -- you know, you actually
 23 wire your money to the escrow company and it sits there
 24 in that escrow company account until the house
 25 transaction closes. I don't think that that kind of

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1 thing happens in a cryptocurrency offer, but I don't --
 2 I shouldn't speculate.
 3 Q Just in a room of lawyers --
 4 A Yeah.
 5 Q All right. Do you know -- and, again,
 6 we've been talking about this. I appreciate you
 7 talking about it. But do you know how that technical
 8 system worked?
 9 A I generally understand but not sufficient
 10 to explain it to you all.
 11 Q That's not -- that wasn't actually where I
 12 was intending to go, so I appreciate it.
 13 A Okay.
 14 Q Okay. There had been part of -- there had
 15 been sort of events in the -- about tokens before
 16 this -- sorry. Let me start over because I'm using the
 17 word event.
 18 We were just talking about the token
 19 distribution event in September.
 20 A Yes.
 21 Q There had been an earlier stage of Kik
 22 selling things to other people; is that right?
 23 A No.
 24 Q Okay. Did Kik sell --
 25 A Oh, oh, the SAFT, yes. Kik sold the right

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1 to acquire tokens to accredited investors in a prior --
 2 up to -- I think it was \$50 million that they had sold
 3 to a certain number of accredited investors. I wasn't
 4 involved in any of that.
 5 Q That was completed by --
 6 A Yeah.
 7 Q Okay.
 8 A It was all over and done with by the time I
 9 got there.
 10 Q Okay. So I think you said you reported to
 11 Ted Livingston your entire time at Kik?
 12 A Yes.
 13 Q Are you on the board of directors?
 14 A No.
 15 Q Who else sort of do you -- what other
 16 people at Kik do you interact with on sort a --
 17 repeatedly?
 18 A I have interacted with Peter Heinke who was
 19 the chief financial officer until about two months ago.
 20 I probably interacted with him as much or more than I
 21 interacted with Ted. I interact with my assistant,
 22 Michelle Dent. I interact with the head of trust and
 23 safety, Gina Serpa. I interact with other executives,
 24 Dany Fishel.
 25 Jody -- Gosh, you know, we don't use last

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1 names, so I'm having trouble remembering Jody's last
 2 name. Jody is head of HR. I interact with Alex
 3 Frenkal who is the head of our Tel Aviv office. And I
 4 interact with Rod McLeod who is our comms director in
 5 New York. And then just whoever reaches out to me. I
 6 mean, basically, I've had the opportunity to talk to
 7 just about everybody in the company at some point or
 8 another.
 9 Q What -- when Mr. Heinke worked at the
 10 company, what was his --
 11 A He was the chief financial officer.
 12 Q Was he also the chief operating officer?
 13 A He might have been. I actually couldn't
 14 say. He might have acted like the chief operating
 15 officer.
 16 Q Okay. And sorry. There was a woman whose
 17 name -- Jenna?
 18 A Jody.
 19 Q Jody was HR?
 20 A Jody was HR.
 21 Q Got it. There was also a woman named
 22 Jenna who I think you said was --
 23 A Oh, Gina.
 24 Q Gina. Sorry.
 25 A Gina Serpa.

<p style="text-align: right;">Page 38</p> <p>1 Q Yep.</p> <p>2 A And she is the head of trust and safety.</p> <p>3 Q Okay. And that's the team you described</p> <p>4 earlier that monitors --</p> <p>5 A Yes, it does content moderation and law</p> <p>6 enforcement.</p> <p>7 Q Okay. I'm sorry. Michelle Dent is your</p> <p>8 assistant?</p> <p>9 A She's a paralegal.</p> <p>10 Q A paralegal.</p> <p>11 Where does she work?</p> <p>12 A She works in Waterloo.</p> <p>13 Q Okay. And Dany Fishel, what does he do for</p> <p>14 the company?</p> <p>15 A Dany is -- he was the president of Rounds,</p> <p>16 which we acquired about a year and a half ago, and</p> <p>17 that's the Tel Aviv office. So he ran the Tel Aviv</p> <p>18 office. He moved to Houston in the early part of this</p> <p>19 year. So he travels a lot.</p> <p>20 Q The company has an office in Houston?</p> <p>21 A No.</p> <p>22 Q Oh, he just --</p> <p>23 A He just lives in Houston. So he works out</p> <p>24 of his house.</p> <p>25 Q What does he do now for the company?</p>	<p style="text-align: right;">Page 40</p> <p>1 (A brief recess was taken.)</p> <p>2 THE VIDEOGRAPHER: We are back on the</p> <p>3 record. The time on the video monitor is 10:40 a.m.</p> <p>4 BY MR. MITCHELL:</p> <p>5 Q Ms. Lyon, during the break, did you have</p> <p>6 any substantive conversations about the case with the</p> <p>7 staff?</p> <p>8 A No.</p> <p>9 Q All right. Earlier you had said that you</p> <p>10 did not have a role with the sale of SAFT. Well, I</p> <p>11 do -- I just want to follow up on that.</p> <p>12 To -- just so to -- did you have -- while</p> <p>13 you worked at Kik, have you had any role in sort of</p> <p>14 compliance around the -- around those sales or</p> <p>15 gathering information about those sales?</p> <p>16 A How do you mean?</p> <p>17 Q Let me just -- let me go -- let me see</p> <p>18 here. Let me just mark this. I'm going to mark two</p> <p>19 documents. They're just charts. These are both</p> <p>20 charts, and I can just tell you I understand it to be</p> <p>21 the lists of the people who bought in SAFT sales. I'm</p> <p>22 going to hand you Exhibit 132, which has a Bates number</p> <p>23 on it.</p> <p>24 (SEC Exhibit No. 132 was marked for</p> <p>25 identification.)</p>
<p style="text-align: right;">Page 39</p> <p>1 A He heads the partnerships team.</p> <p>2 Q Alex Frenkal, what does he do?</p> <p>3 A He runs the Tel Aviv office now. He's the</p> <p>4 product manager, product -- the product head.</p> <p>5 Q Did he replace Eran Ben-Ari?</p> <p>6 A There was some overlap, but I think, in</p> <p>7 essence, he's, you know, taken over all of Eran's</p> <p>8 functions.</p> <p>9 Q Okay, okay.</p> <p>10 A I did work with Eran when he was at Kik.</p> <p>11 Q Sure. And did you work with Erin Clift</p> <p>12 when she worked at Kik?</p> <p>13 A Not really. I met -- I never met her in</p> <p>14 person, and I was on a few phone calls where she was on</p> <p>15 the phone as well.</p> <p>16 Q Okay.</p> <p>17 MR. SCHLEGELMILCH: What's the approximate</p> <p>18 head count at Kik right now?</p> <p>19 THE WITNESS: I want to say about 150,</p> <p>20 maybe 170.</p> <p>21 MR. SCHLEGELMILCH: Okay. Thank you.</p> <p>22 MR. MITCHELL: So we're going to go off the</p> <p>23 record.</p> <p>24 THE VIDEOGRAPHER: Going off the record.</p> <p>25 The time on the video monitor is 10:26 a.m.</p>	<p style="text-align: right;">Page 41</p> <p>1 BY MR. MITCHELL:</p> <p>2 Q Kik 000283. That's 132. And I'm going to</p> <p>3 give you what has been -- what -- it doesn't have a</p> <p>4 Bates number on it but I printed from Kik 001187.</p> <p>5 (SEC Exhibit No. 133 was marked for</p> <p>6 identification.)</p> <p>7 BY MR. MITCHELL:</p> <p>8 Q So Exhibit 133 is a -- this is a -- that</p> <p>9 physical piece of paper doesn't have a page -- doesn't</p> <p>10 have a Bates number, but it is the document that has a</p> <p>11 Bates number KIK 001187.</p> <p>12 So can you look at Exhibits 132 and 133?</p> <p>13 A Okay.</p> <p>14 Q And, again, my first question is going to</p> <p>15 be: Do you recognize these?</p> <p>16 A I may have seen these, but they're not --</p> <p>17 I'm not familiar with them. I wouldn't say I'm</p> <p>18 familiar with them.</p> <p>19 Q Okay. Were you -- well, I guess, right.</p> <p>20 Were you involved in creating these?</p> <p>21 A I don't think so.</p> <p>22 Q Okay. Do you know who at Kik was involved</p> <p>23 with collecting information about the people who bought</p> <p>24 SAFTs?</p> <p>25 A I don't know. I would say it was Tanner,</p>

<p style="text-align: center;">Page 42</p> <p>1 but I don't know.</p> <p>2 MR. LEASURE: Do you have any reason to 3 believe these are -- this is an inaccurate list?</p> <p>4 THE WITNESS: I have no idea whether it's 5 accurate or inaccurate. I see some names that I'm 6 familiar with, but I don't know.</p> <p>7 MR. LEASURE: Okay.</p> <p>8 MR. MURTHA: Have you ever met with anybody 9 on this list?</p> <p>10 THE WITNESS: I'm sorry?</p> <p>11 MR. MURTHA: Have you ever met with anybody 12 on this list?</p> <p>13 THE WITNESS: Yes, Daniel Peled.</p> <p>14 BY MR. MITCHELL:</p> <p>15 Q He works for Coin Tree?</p> <p>16 A Does he?</p> <p>17 Q Sorry. That was a question.</p> <p>18 A I know he works for Orbs.</p> <p>19 Q Orbs?</p> <p>20 A Yes. Tal Cole. Uriel Peled. William 21 McGuire. Michael Arrington, that name sounds familiar, 22 but I don't -- I can't place where I might have met 23 him.</p> <p>24 Q Did he have a previous relationship with TechCrunch?</p>	<p style="text-align: center;">Page 44</p> <p>1 THE WITNESS: Pantera?</p> <p>2 MR. LEASURE: Yes.</p> <p>3 THE WITNESS: Paul Veradittakit or 4 something.</p> <p>5 MR. LEASURE: We'll go with Paul.</p> <p>6 THE WITNESS: Paul, Paul V. You can say 7 Paul V.</p> <p>8 MR. LEASURE: Paul V. Tell me about that 9 conversation.</p> <p>10 THE WITNESS: Tanner and I talked to Paul 11 V. at a time when we were talking about filing an 12 application with Bittrex, and we asked for -- it was 13 our understanding -- I'm not sure where this came 14 from but -- that companies that had issued tokens 15 didn't apply directly to the exchange, that they had to 16 be listed by holders or the request had to be made by 17 holders. So they were a holder and so -- and they had 18 a relationship. So the idea was they were going to 19 submit the application for us, which he did.</p> <p>20 BY MR. MITCHELL:</p> <p>21 Q I can just take those back so we don't use them.</p> <p>22 Are you familiar with the contract that is sometimes called the SAFT?</p> <p>23 A I'm familiar with the contract that's</p>
<p style="text-align: center;">Page 43</p> <p>1 A Maybe. I don't think I met with him. 2 Okay.</p> <p>3 MR. LEASURE: Any of the entities listed on 4 here, have you ever met with any of the representatives 5 for them?</p> <p>6 THE WITNESS: I think I had a phone call 7 with somebody, Paul Veradittakit from Pantera. I don't 8 know if that's how you say it or spell his name.</p> <p>9 MR. LEASURE: Have you ever visited any of 10 the addresses listed on Exhibit 132?</p> <p>11 THE WITNESS: Ever? I might have visited 12 588 Sutter Street once in my life, but I couldn't tell 13 you when.</p> <p>14 MR. LEASURE: It wasn't to meet with Brundy 15 LLC?</p> <p>16 THE WITNESS: No, it was not. And I've 17 been to New York and California and Israel.</p> <p>18 BY MR. MITCHELL:</p> <p>19 Q Because there are entries that just say New York?</p> <p>21 A Exactly. Yeah. I -- other than those, I 22 don't think I've been to any. Like where is Daniels -- 23 yeah. It just says Israel.</p> <p>24 MR. LEASURE: You referenced a conversation 25 with somebody at --</p>	<p style="text-align: center;">Page 45</p> <p>1 sometimes called -- yes, I know. Simple agreement for 2 future tokens.</p> <p>3 Q All right. And so how did the mechanics of the -- that -- the sale that used the SAFT work in terms of what people paid, what they got?</p> <p>6 THE WITNESS: Is that something I should be 7 answering?</p> <p>8 MR. CADIGAN: Wait a minute. Was that 9 something that occurred before you got there?</p> <p>10 THE WITNESS: Yeah. The transactions all 11 occurred before I got there. I haven't had any 12 occasion to enforce them or, you know, do anything with 13 them. So I may have read them. I don't know that I 14 want to talk about my understanding of how they work. 15 I mean, is that a thought process?</p> <p>16 MR. CADIGAN: I mean, we -- actually, if 17 you want to ask the question, we might need to step out 18 to get into it. I mean, you can't give them the SAFT 19 that occurred before you got there. I mean, with 20 everything that you might just discuss --</p> <p>21 THE WITNESS: Yeah. I mean, I generally 22 understand what they are.</p> <p>23 MR. CADIGAN: Through what? How? Through 24 conversations with Kik employees?</p> <p>25 THE WITNESS: No. Just reading about the</p>

<p style="text-align: center;">Page 46</p> <p>1 SAFT instruments as part of my background research. 2 BY MR. MITCHELL: 3 Q Have you read the document? 4 A I have looked over the Kik form of SAFT. 5 Q Okay. So the question I had before was 6 sort of how did the transaction work? 7 What did -- had -- what did one side -- 8 what did the other side give to Kik and what did Kik 9 give to them? 10 MR. CADIGAN: Is it -- so you're asking her 11 understanding of how the transaction worked? 12 MR. MITCHELL: Or the -- yeah. My 13 understanding is that the document runs the 14 transaction. I'm not -- 15 MR. CADIGAN: Right. So you have the 16 document, right? I mean, do you really need her 17 understanding to describe the document? 18 BY MR. MITCHELL: 19 Q Well, I'll give you what we already marked 20 as Exhibit 5. It's just a copy of the SAFT. 21 Yeah. So my question is -- yeah. I just 22 want to understand how I can read -- I can read the 23 document. 24 MR. CADIGAN: Right. 25 MR. MITCHELL: But I'm not going to</p>	<p style="text-align: center;">Page 48</p> <p>1 room, we had a conversation with your attorney, and I'm 2 just going to withdrawal the question and move on. 3 A Okay. 4 Q At some point, we discussed earlier that 5 the Kin Ecosystem Foundation was created at some point 6 before the -- the one in September; is that right? 7 A I think it was September 12th. 8 Q Okay. Did you have any role in that? 9 A No. 10 Q Okay. Did you ever deal with a person 11 named -- it's probably French, and I'm going to 12 mispronounce it. Virginia Ethier, V-i-r-g-i-n-i-a 13 E-t-h-i-e-r? 14 A I have not met her. 15 Q Okay. Before -- so the -- September 26th 16 was the day that Kik distributed the Kin token to 17 people? 18 A That's my understanding, yes. 19 Q At any time before then, did you have 20 conversations with anyone who wanted to buy tokens or 21 was considering buying tokens? 22 A Maybe people at the company. 23 Q Sure. Leaving aside people at the company? 24 A Or -- I don't think so. There was one 25 person that wanted to participate and was denied</p>
<p style="text-align: center;">Page 47</p> <p>1 testify, so I'm trying understand. I'm just trying to 2 make sure that I -- 3 MR. CADIGAN: Get her understanding of this 4 document? 5 MR. MITCHELL: Yeah. Because she said 6 she's read it and -- 7 MR. CADIGAN: Yes, she did. I'm just 8 trying to ascertain because she is an attorney. She is 9 in-house counsel, and you're trying to get her 10 understanding, her mental impressions on this document. 11 So we're just going to need to step out to get into 12 that. 13 MR. MITCHELL: Okay. Sure. We'll go off 14 the record. 15 THE VIDEOGRAPHER: Going off the record. 16 The time on the monitor is 10:49 a.m. 17 (Discussion off the record.) 18 THE VIDEOGRAPHER: We are back on the 19 record. The time on the video monitor is 10:58 a.m. 20 BY MR. MITCHELL: 21 Q Ms. Lyon, during the break, did you have 22 any substantive conversations about the case with the 23 staff? 24 A No. 25 Q So we had -- while you were out of the</p>	<p style="text-align: center;">Page 49</p> <p>1 participation because of an OFAC screen, and it was 2 often you get false positives. His was apparently a 3 false-positive case. But by the time it was cleared, 4 it was too late for him to be registered or something 5 like that. And I only had e-mail communications with 6 the person. And I told him sorry but, you know, we 7 can't accommodate. 8 Q Okay. Got it. And so your interaction 9 with him was just over the question of whether he was 10 allowed to register? 11 A Correct. 12 Q Was there a know-your-customer process for 13 the sale to the public? 14 A Yes. 15 Q Okay. Were you -- did you have any role in 16 that? 17 A Yes. 18 Q What was your role? 19 A During registration or -- during 20 registration as individuals were being vetted through 21 IdentityMind, which was the vendor that was doing this 22 for us, there would be false positives from time to 23 time that were -- that would come up or there would be 24 questions about particular anomalies in the 25 registration process. And so from time to time, I</p>

<p style="text-align: center;">Page 50</p> <p>1 would weigh in on whether or not we could accept that 2 person or not accept that person.</p> <p>3 Q Okay. IdentityMind was a company that Kik 4 hired to do that work?</p> <p>5 A Yes.</p> <p>6 Q Okay. Were you involved in hiring 7 IdentityMind or in the work of deciding what would -- 8 what information IdentityMind would collect or had they 9 collected?</p> <p>10 A No. That was set up before I got there.</p> <p>11 Q Okay. Do you know who set that up?</p> <p>12 A I don't know, but I believe it would have 13 been Scott Benson.</p> <p>14 Q Okay. And did Kik use the information that 15 IdentityMind collected to decide who it could sell 16 to -- or who -- who could register and who couldn't 17 register?</p> <p>18 A Yes.</p> <p>19 Q Okay. How? Like, what kind of -- what 20 were they doing?</p> <p>21 A It collected information about a person, 22 where they were from, their birth date or social 23 security number or passport identification in the event 24 that they had more than -- you know, they're 25 registering to purchase more than \$100,000 in the U.S.</p>	<p style="text-align: center;">Page 52</p> <p>1 decisions on what -- whether a person was eligible or not?</p> <p>3 A Yeah.</p> <p>4 Q Did IdentityMind employees make that call?</p> <p>5 A I don't know. I -- ultimately, there may 6 have been, like, a level where they made a decision and 7 then we made a decision if it was, you know, no. So we 8 might override that, but I couldn't tell you really.</p> <p>9 Q Okay. But --</p> <p>10 A I do know that from time to time, a 11 question was elevated to me, and I made the final call.</p> <p>12 Q And I'm -- and -- sorry. You were making 13 final calls about things like based on their birth date 14 or based on where they were from or their passport?</p> <p>15 A Probably the -- I don't recall specifically 16 an instance. But it would have been, you know, an 17 inconsistency in something, you know, whether we could 18 accept that inconsistency or not.</p> <p>19 Q Okay. And it's an inconsistency in the 20 data that --</p> <p>21 A Yeah.</p> <p>22 Q -- that IdentityMind had?</p> <p>23 A Right.</p> <p>24 Q Okay. Sorry. What's a BitLicense?</p> <p>25 A New York state has a regime for</p>
<p style="text-align: center;">Page 51</p> <p>1 or outside of the U.S.</p> <p>2 And after running those through a screening 3 process, the determination that was made that, first of 4 all, we wouldn't -- we weren't going to be selling to 5 people who lived in New York because of the requirement 6 of having a BitLicense. We didn't have a BitLicense. 7 So we felt that there was too much risk there.</p> <p>8 And Washington state, I believe, was 9 excluded. And then, ultimately, Canada was excluded 10 and China was excluded. And there are maybe others, 11 countries that were excluded. So if a person was from 12 those countries, they were excluded. Or if they didn't 13 pass the OFAC screening or whatever sanctions 14 screening -- it wasn't just OFAC -- we would exclude 15 them.</p> <p>16 Q And that was based on the information that 17 IdentityMind had gathered?</p> <p>18 A It was information gathered through -- as I 19 understand it, they're a portal. And so the 20 individuals would sign up and provide that information 21 to IdentityMind. So they would collect it.</p> <p>22 Q And that IdentityMind provided to Kik?</p> <p>23 A They didn't provide -- we had access to the 24 information, but they maintained the information.</p> <p>25 Q I think you were describing earlier sort of</p>	<p style="text-align: center;">Page 53</p> <p>1 cryptocurrency that they call the BitLicense and you -- 2 it's a money transmission license. But it's so broadly 3 written that it could encompass things that we might be 4 doing, selling cryptocurrency to residents.</p> <p>5 Q And so if Kik thought someone was from New 6 York, it just -- they couldn't register?</p> <p>7 A Right.</p> <p>8 Q Okay. And the same thing for Washington 9 state?</p> <p>10 A Yes.</p> <p>11 Q And what was the issue with Washington 12 state?</p> <p>13 A I didn't do that analysis. I only know 14 from talking to outside counsel that they had 15 previously concluded that.</p> <p>16 Q That sounds fine. Sorry.</p> <p>17 And then China and Canada as well?</p> <p>18 A Correct.</p> <p>19 Q And if a person said they were from those 20 places then they could not participate, they couldn't 21 register?</p> <p>22 A Well, they might have registered initially, 23 but they couldn't purchase.</p> <p>24 MR. MURTHA: Under the New York BitLicense 25 regime, do you -- how come New Yorkers were allowed to</p>

<p style="text-align: right;">Page 54</p> <p>1 participate in a private sale but not the public sale?</p> <p>2 THE WITNESS: I don't know.</p> <p>3 MR. MURTHA: Neither do I.</p> <p>4 BY MR. MITCHELL:</p> <p>5 Q I apologize. I'm just looking at something 6 to see if I've already got an answer, then I don't need 7 to even ask it.</p> <p>8 So at the end of the -- so it was -- there 9 was a process where people registered for the sale, and 10 then they would either be approved or not approved; is 11 that right?</p> <p>12 A That's correct.</p> <p>13 Q Okay. And then there was a second process 14 in the token distribution event where people basically 15 said -- actually sort of said I want to have this -- I 16 would like to buy this much Kin, and there were limits 17 and different stages; is that right, as well?</p> <p>18 A Right.</p> <p>19 Q And then after that point -- there was a 20 point at which that closed?</p> <p>21 A Yes, I think it was the first 24 hours.</p> <p>22 Q That's the -- the first stage closed?</p> <p>23 A The first stage was 24 hours, where there 24 was a limit.</p> <p>25 Q Okay. And then there was a later stage</p>	<p>1 it was made.</p> <p>2 Q Okay.</p> <p>3 A And it ended and we sold the tokens.</p> <p>4 Q You mean you distributed the tokens out?</p> <p>5 A Distributed the tokens.</p> <p>6 Q Okay. And at that point, did Kik reach out 7 to the people who had purchased SAFTs and asked, you 8 know, how many tokens do you want?</p> <p>9 A I don't think so.</p> <p>10 Q Why not?</p> <p>11 A My understanding is that they were already 12 committed to the amount.</p> <p>13 Q The buyers were already committed?</p> <p>14 A Uh-huh.</p> <p>15 Q Okay. And Kik was committed to -- whatever 16 they had said they purchased, Kik would deliver them 17 half of them at that time?</p> <p>18 A Uh-huh.</p> <p>19 Q Sorry. I apologize.</p> <p>20 A It's programmed into a smart contract.</p> <p>21 Q I appreciate it. It's actually when I 22 asked you a question and you answered with an uh-huh --</p> <p>23 A Uh-huh.</p> <p>24 Q I just want to make sure -- just for the 25 record, it's easier for her if she gets a yes or no.</p>
<p style="text-align: right;">Page 55</p> <p>1 where there was no limit?</p> <p>2 A Which is just the -- until the full amount 3 of tokens had been sold or I think we ended up cutting 4 it off at some point.</p> <p>5 Q So at some point there was a -- at some 6 point that whole process ended?</p> <p>7 A Yes.</p> <p>8 Q And then after that, did Kik distribute the 9 Kin to people who had purchased it?</p> <p>10 A Yes.</p> <p>11 Q Okay. And at the same time, did Kik 12 distribute Kin to the people who had purchased SAFT 13 previously?</p> <p>14 A Yes.</p> <p>15 Q Okay. And so was there someone at the 16 company who sort of made the decision about, okay, now 17 we're ready to distribute?</p> <p>18 A I don't know.</p> <p>19 Q Okay. Do you know how -- well, was there 20 some process that Kik went through to say, okay, yes, 21 we've completed the launch and it's time for us to 22 distribute to people who had purchased in the SAFT?</p> <p>23 A There was -- yeah. There was a process 24 where that decision was made. I don't know who made 25 it. I don't know how it was made. I just recall that</p>	<p>1 So at that point, the people from the -- 2 the people who owned the SAFTs were -- had -- they were 3 committed to provide the money they promised; is that 4 right?</p> <p>5 A That's my understanding.</p> <p>6 Q And at the same time, Kik was committed to 7 providing the tokens that had been promised in the 8 SAFT?</p> <p>9 A Yes.</p> <p>10 Q Couple super practical questions.</p> <p>11 Do each Kin tokens have an equal value to 12 each other?</p> <p>13 A They're fungible.</p> <p>14 Q Okay.</p> <p>15 A Each one is fungible with every other one.</p> <p>16 Q That's the same as each other?</p> <p>17 A Yes.</p> <p>18 Q All right. So does any Kin token have a 19 greater right or value than any other Kin token?</p> <p>20 A Not to my knowledge. They're completely 21 fungible.</p> <p>22 Q And so the tokens that Kik has received are 23 fungible with the tokens that other people have 24 received?</p> <p>25 A Yes.</p>

<p style="text-align: center;">Page 58</p> <p>1 MR. SCHLEGELMILCH: And the same is true 2 with the tokens that the foundation received; is that 3 correct?</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. MITCHELL:</p> <p>6 Q At some -- at any point while you were 7 working at Kik, did you talk to banks about the Kin 8 token offering?</p> <p>9 A Yes.</p> <p>10 Q Why?</p> <p>11 A Because we wanted to open a bank account to 12 hold proceeds from the token offering.</p> <p>13 Q So tell me about that. What was your role 14 in that?</p> <p>15 A I spoke to the compliance officer and the 16 chief operating officer at Silvergate Bank regarding 17 the structure of the offering and the KYC process 18 primarily that we had done.</p> <p>19 Q At the time you talked to Silvergate, did 20 the -- did Kik already have an account at Silvergate?</p> <p>21 A No.</p> <p>22 Q Did you talk to any banks other than 23 Silvergate?</p> <p>24 A I might have been on a call where we talked 25 to the Bank of Montreal, BMO. I should call it BMO.</p>	<p style="text-align: center;">Page 60</p> <p>1 before the token distribution event?</p> <p>2 A Correct.</p> <p>3 Q And then out of -- after your conversation, 4 did Silvergate open an account for Kik?</p> <p>5 A Yes.</p> <p>6 Q Before the token distribution event?</p> <p>7 A I don't know.</p> <p>8 Q All right. Have you had conversations with 9 them since the token distribution event?</p> <p>10 A Yes.</p> <p>11 Q Like in what context?</p> <p>12 A The compliance officer contacted me 13 regarding some of the participants, some of the 14 purchasers, and asked if we could confirm that we did 15 KYC on them and if we had any other information about 16 them, about those particular purchasers.</p> <p>17 Q How did Silvergate know the names of the 18 purchasers?</p> <p>19 A They didn't know the names. They knew the 20 public addresses.</p> <p>21 Q On the Ethereum blockchain?</p> <p>22 A Uh-huh.</p> <p>23 Q So they flagged some set of Ethereum 24 blockchain addresses for you?</p> <p>25 A Uh-huh.</p>
<p style="text-align: center;">Page 59</p> <p>1 But I can't say for certain.</p> <p>2 Q Okay. Let me take the Silvergate then. 3 Did you have one conversation with them, 4 multiple conversations with them? What do you 5 remember?</p> <p>6 A Prior to the offering, I think I only had 7 one conversation.</p> <p>8 Q Okay. And what did they -- well, sorry. 9 They were asking questions or?</p> <p>10 A They were asking questions.</p> <p>11 Q So what did they ask?</p> <p>12 A To my recollection, they were very 13 interested in the KYC process.</p> <p>14 Q What did you tell them about the KYC 15 process?</p> <p>16 A I told them what I knew about the KYC 17 process, which I've already told you about.</p> <p>18 Q Right. This is the process with -- 19 sorry -- the contractor, IdentityMind?</p> <p>20 A Correct.</p> <p>21 Q Okay. Did anyone from Silvergate raise any 22 questions about whether Kin tokens were a security?</p> <p>23 A They may have, but I don't recall.</p> <p>24 Q I think you said that you had one 25 conversation with them before the token, that was</p>	<p style="text-align: center;">Page 61</p> <p>1 Q And so then what did you do?</p> <p>2 A So we compared them to our list of token 3 distribution event purchasers to see who they were, and 4 we didn't want to share the personal information. So 5 we had a little bit of back-and-forth as to how we 6 could vouch for them. I mean, we weren't really 7 vouching for them, but we were saying that we had 8 completed a KYC process on them.</p> <p>9 Q Okay.</p> <p>10 A And none of them had turned up in a 11 sanction screening. So that seemed to satisfy them.</p> <p>12 Q So you provided the information, was that 13 the end of the dealings?</p> <p>14 A I believe they also asked us about any 15 regulatory issues that we might have had subsequent to 16 the TDE.</p> <p>17 Q What did you tell them?</p> <p>18 A We told them that we were in discussions 19 with the SEC regarding a potential Section 5 violation. 20 I'm not sure exactly how much information we gave them.</p> <p>21 Q Okay. What happened next?</p> <p>22 A Nothing.</p> <p>23 Q Okay. Thank you. Other than those 24 conversations with Silvergate, have you had any other 25 conversations with people at Silvergate?</p>

<p style="text-align: center;">Page 62</p> <p>1 A I don't think so.</p> <p>2 Q Okay. Let's move to -- let me -- let's</p> <p>3 talk about Bank of Montreal.</p> <p>4 A Uh-huh.</p> <p>5 Q What was your dealings with the Bank of</p> <p>6 Montreal?</p> <p>7 A It would have just been to sit on a phone</p> <p>8 call with our chief financial officer when he was</p> <p>9 talking with them about potentially opening an account</p> <p>10 with their U.S. affiliate.</p> <p>11 Q And this is, again, Mr. Heinke?</p> <p>12 A Heinke.</p> <p>13 Q Heinke. Was it one -- like, one phone call</p> <p>14 you remember or multiple phone calls?</p> <p>15 A I don't remember.</p> <p>16 Q What -- did Bank of Montreal have questions</p> <p>17 like Silvergate did?</p> <p>18 A Very similar.</p> <p>19 Q So what were -- what were its questions?</p> <p>20 A They wanted to understand how the token</p> <p>21 offering was being conducted. You know, how we</p> <p>22 approached the KYC process.</p> <p>23 Q Anything else?</p> <p>24 A Nothing that I can recall.</p> <p>25 Q Were you on calls with Bank of Montreal</p>	<p style="text-align: center;">Page 64</p> <p>1 refreshing your recollection. Let me give you what has</p> <p>2 been marked as Exhibit 134.</p> <p>3 (SEC Exhibit No. 134 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. MITCHELL:</p> <p>6 Q 134. Do you -- sorry. Exhibit 134 is a</p> <p>7 multi-page document with the Bates number Kik_00045379</p> <p>8 to 382.</p> <p>9 A Okay.</p> <p>10 Q Do you recognize this Exhibit 134?</p> <p>11 A Yes, I do.</p> <p>12 Q What is this?</p> <p>13 A This is a memorandum being provided to</p> <p>14 Toronto Dominion Bank.</p> <p>15 Q So have I successfully refreshed your</p> <p>16 recollection?</p> <p>17 A A little bit. I am vaguely recalling</p> <p>18 putting this together, but I don't remember the context</p> <p>19 specifically, other than there was some question about</p> <p>20 whether they wanted to continue to be our bank in the</p> <p>21 light of our doing a cryptocurrency offering.</p> <p>22 Q And is the -- thinking of it -- was that</p> <p>23 before or after the actual token distribution happened?</p> <p>24 A I can't remember.</p> <p>25 Q Okay. Did someone send this to TD Bank?</p>
<p style="text-align: center;">Page 63</p> <p>1 with Mr. Tanner Philp?</p> <p>2 A I can't recall if he was on those phone</p> <p>3 calls.</p> <p>4 Q Do you recall whether the Bank of Montreal</p> <p>5 asked about whether the Kin tokens were securities?</p> <p>6 A I don't recall.</p> <p>7 Q You don't remember one way or the other?</p> <p>8 A I don't remember one way or the other.</p> <p>9 Q Okay. Did anyone from Kik, in the</p> <p>10 conversations you were in, talk to anyone at the Bank</p> <p>11 of Montreal about an analysis of whether the tokens</p> <p>12 were securities?</p> <p>13 A I don't recall.</p> <p>14 Q You don't recall anyone doing that?</p> <p>15 A I don't recall anyone talking about that.</p> <p>16 Q Okay. What about TD Bank? Have you dealt</p> <p>17 with anyone from TD Bank?</p> <p>18 A I don't think so, but TD Bank is our</p> <p>19 current bank.</p> <p>20 Q Do you deal with them regularly?</p> <p>21 A No.</p> <p>22 Q Did you draft any documents for TD Bank?</p> <p>23 A I don't recall, but it looks like you have</p> <p>24 something there.</p> <p>25 Q Yeah. I will try and do what we would call</p>	<p style="text-align: center;">Page 65</p> <p>1 A I -- probably, yes.</p> <p>2 Q Do you know who did?</p> <p>3 A It might have been Peter Heinke.</p> <p>4 Q Okay. Let me back up a little. Who was</p> <p>5 the person dealing with TD Bank on that, on the issue</p> <p>6 you just mentioned?</p> <p>7 A On the issue of the -- talking to the --</p> <p>8 Q Right. Yeah. Whether they wanted --</p> <p>9 A Peter, our CFO, was talking with TD Bank</p> <p>10 about continuing our banking relationship with them.</p> <p>11 Q Okay. If you could just sort of look</p> <p>12 through it, I -- is this --- do you -- I mean, sitting</p> <p>13 here now, do you now remember drafting this?</p> <p>14 A I remember it. As far as drafting, I'm not</p> <p>15 sure I would -- it was probably a cut-and-paste job</p> <p>16 that I took from something else for the most part. I</p> <p>17 know that this -- examples from the white paper, I</p> <p>18 didn't write those out of my brain. I think -- the</p> <p>19 presale section and the token launch, I think those</p> <p>20 are -- I think those are crypt from something that our</p> <p>21 Canadian lawyers wrote. I probably wrote the part</p> <p>22 about the money services businesses.</p> <p>23 Q Okay. Was this information --</p> <p>24 A I know I created this little graphic at the</p> <p>25 back because I was trying to figure it all out for</p>

<p>Page 66</p> <p>1 myself so I threw that in there.</p> <p>2 Q Okay. The graphic that's on the page that</p> <p>3 ends 82?</p> <p>4 A Yes.</p> <p>5 Q What is that?</p> <p>6 A It's a graphic that shows what had been</p> <p>7 originally the structure of the token distribution that</p> <p>8 Kik would enter into a distribution agreement with KDS,</p> <p>9 which is a subsidiary of Kin -- of Kik. We didn't end</p> <p>10 up doing that. So that, you know, you can just ignore</p> <p>11 it.</p> <p>12 Q Okay. And what -- when you put this</p> <p>13 together, it was -- was this correct as you -- as far</p> <p>14 as --</p> <p>15 A As far as I knew, it was the proposed</p> <p>16 structure.</p> <p>17 Q Do you remember anything else? Have I</p> <p>18 refreshed your recollection at all about any other</p> <p>19 interactions with TD Bank?</p> <p>20 A No.</p> <p>21 Q Have you dealt with TD Bank since the token</p> <p>22 distribution event?</p> <p>23 A I don't believe I have.</p> <p>24 Q Okay. I'm just going to -- with</p> <p>25 everything -- change a couple subjects.</p>	<p>Page 68</p> <p>1 Q All right. And same kind of question.</p> <p>2 When you wrote it, to the best of your</p> <p>3 knowledge, it was correct?</p> <p>4 A Yes.</p> <p>5 Q All right. Anything that you're looking at</p> <p>6 it now that didn't -- is this the way it actually went</p> <p>7 or is there a part in here that didn't turn out that</p> <p>8 way?</p> <p>9 A Well, there are parts of this that were --</p> <p>10 we don't refer to them in the same way, and so I'm not</p> <p>11 clear in my mind that it did, in fact, happen. So, for</p> <p>12 example, under the Kin ecosystem, Kik users, it's</p> <p>13 referring to reward Kin allocated to a master wallet to</p> <p>14 back up the status reward Kin. We don't refer to it</p> <p>15 that way. So I'm not sure if that's exactly what</p> <p>16 happened. Derek isn't our controller anymore.</p> <p>17 Q Sorry. Literally the contact list, the --</p> <p>18 Mr. Heinke and Mr. Lebert --</p> <p>19 A Yep. Lebert.</p> <p>20 Q Lebert.</p> <p>21 A He's not our controller anymore, but, you</p> <p>22 know, generally, it's correct. It was -- I believe it</p> <p>23 was correct at the time it was written.</p> <p>24 Q Sounds okay. Literally just reading it, it</p> <p>25 looks to me like the token distribution event hasn't</p>
<p>Page 67</p> <p>1 A Sure.</p> <p>2 Q I'm going to mark as Exhibit 135 a</p> <p>3 document, a multi-page document with a Bates number</p> <p>4 Kik_00045676 to 678.</p> <p>5 (SEC Exhibit No. 135 was marked for</p> <p>6 identification.)</p> <p>7 THE WITNESS: Yep.</p> <p>8 BY MR. MITCHELL:</p> <p>9 Q I'm literally asking you this because I</p> <p>10 think this -- let's see where I found it. The meta --</p> <p>11 so in the document production in the metadata --</p> <p>12 A Uh-huh.</p> <p>13 Q The metadata says created by you, that's</p> <p>14 why I was just asking about it.</p> <p>15 A Yep.</p> <p>16 Q What is -- do you recognize Exhibit 135?</p> <p>17 A Yes.</p> <p>18 Q What is it?</p> <p>19 A It's a chart generalizing the -- generally</p> <p>20 describing how the token sale was structured and</p> <p>21 planned to occur. And my recollection is this was</p> <p>22 something we used to talk to Silvergate. I don't know</p> <p>23 if it was used for the other banks, but I'm pretty sure</p> <p>24 I gave this to Silvergate or someone gave this to</p> <p>25 Silvergate.</p>	<p>Page 69</p> <p>1 happened yet at the time you're writing this, though?</p> <p>2 A I presume that I wrote this prior to the</p> <p>3 event happening.</p> <p>4 Q Okay.</p> <p>5 MR. LEASURE: There's a reference in</p> <p>6 Exhibit 135 on the second page, in the box, "key</p> <p>7 considerations"?</p> <p>8 THE WITNESS: Yep.</p> <p>9 MR. LEASURE: "Kin not a security"?</p> <p>10 THE WITNESS: Yep.</p> <p>11 MR. LEASURE: Did you discuss that topic</p> <p>12 with anyone at Silvergate?</p> <p>13 THE WITNESS: I don't recall if I did or</p> <p>14 not.</p> <p>15 MR. LEASURE: Okay. I was seeing if this</p> <p>16 maybe jogged any recollection or anything.</p> <p>17 How about at any other bank that we</p> <p>18 discussed so far?</p> <p>19 THE WITNESS: I don't recall if I did or</p> <p>20 not.</p> <p>21 BY MR. MITCHELL:</p> <p>22 Q One other document that I just really want</p> <p>23 to ask is the metadata has that it's e-mailed from you.</p> <p>24 A Okay.</p> <p>25 Q So I'm going to give you what I'm going to</p>

<p style="text-align: right;">Page 70</p> <p>1 mark as Exhibit 136.</p> <p>2 (SEC Exhibit No. 136 was marked for</p> <p>3 identification.)</p> <p>4 BY MR. MITCHELL:</p> <p>5 Q Exhibit 136 has a Bates number Kik 99989</p> <p>6 and runs through Kik_00100001.</p> <p>7 A Okay.</p> <p>8 Q All right. Do you recognize the -- take as</p> <p>9 much time as you want.</p> <p>10 A No. I recognize the document.</p> <p>11 Q What is it?</p> <p>12 A It is a spreadsheet that I prepared in</p> <p>13 which I attempted to go through the white paper to</p> <p>14 capture what we said we would do as -- in the offering,</p> <p>15 and then was intended to look and see, well, who was</p> <p>16 going to do it and whether we had done it. And my</p> <p>17 intention at the time was to keep this up to date, but</p> <p>18 I don't think I ever looked at it again.</p> <p>19 Q Okay.</p> <p>20 A But I wanted to be sure that we were</p> <p>21 focused on, you know, what the white paper said and</p> <p>22 making sure that we did it.</p> <p>23 Q Why?</p> <p>24 A Because of -- I think that when -- well, if</p> <p>25 your website says you're going to do something, I think</p>	<p style="text-align: right;">Page 72</p> <p>1 or the -- since the token distribution event?</p> <p>2 A Well, I've been dealing with you all.</p> <p>3 Q Yes. I would appreciate that.</p> <p>4 A I have been present during meetings of the</p> <p>5 management team and executive team in which the</p> <p>6 continued build out of the Kin Ecosystem was discussed.</p> <p>7 Q Okay.</p> <p>8 A And for which I provided legal and</p> <p>9 compliance advice.</p> <p>10 Q Okay. I'm going to focus on the compliance</p> <p>11 side. Is there some compliance work that you've done</p> <p>12 that's sort of separate from providing legal advice?</p> <p>13 A I kind of think of compliance as being the</p> <p>14 money transmission side of things as opposed to, you</p> <p>15 know, other legal issues, but they're really all legal</p> <p>16 regulatory issues, complying with federal and state</p> <p>17 regulations and other countries' regulations.</p> <p>18 Q Okay. So I'm going to keep away -- I'm</p> <p>19 going to try to keep away from sort of your</p> <p>20 conversations with people inside Kik.</p> <p>21 Have you worked with people or dealt with</p> <p>22 people outside of Kik on any parts of the Kin project</p> <p>23 since the token distribution event?</p> <p>24 A Yes. I have spoken, as I mentioned before,</p> <p>25 with Bittrex.</p>
<p style="text-align: right;">Page 71</p> <p>1 you should do it.</p> <p>2 Q And the -- just -- it has sort of a bunch</p> <p>3 of -- it has a bunch of lines?</p> <p>4 A Uh-huh.</p> <p>5 Q And then some of them are just -- like, I'm</p> <p>6 just trying to pick one. 22. All right.</p> <p>7 If you look on the page that ends in 991 --</p> <p>8 A Uh-huh.</p> <p>9 Q -- 22 says, "As the founding member of the</p> <p>10 Kin foundation, Kik will be the ecosystem's champion</p> <p>11 and will showcase Kin to its millions of users."</p> <p>12 So this is the -- that's the kind of thing</p> <p>13 that you're talking about that you were going to try to</p> <p>14 keep track of?</p> <p>15 A Well, it's on there, yeah.</p> <p>16 Q Okay. All right. I have a lot of</p> <p>17 spreadsheets like that, too, that were started with the</p> <p>18 best of intentions. Okay. So let me take you to the</p> <p>19 time after the token distribution event.</p> <p>20 A All right.</p> <p>21 Q What kind of role have you had with Kin</p> <p>22 tokens since then? Sorry. I know you already talked</p> <p>23 about for part of the time -- well, probably not the</p> <p>24 Kin tokens.</p> <p>25 What role you have had with the Kin tokens</p>	<p style="text-align: right;">Page 73</p> <p>1 Q Bittrex, yeah.</p> <p>2 A And exchanged. I've prepared for filing</p> <p>3 other applications to other exchanges, including</p> <p>4 Binance and Huobi. I have talked with William McGuire</p> <p>5 who is one of the directors of the foundation and Juan</p> <p>6 Llanos who is a consultant to the foundation. Kin</p> <p>7 tokens. Outside of the company.</p> <p>8 Q Have you dealt with anyone at Stellar?</p> <p>9 A Yes. I've spoken with some people at</p> <p>10 Stellar when we were making the decision to migrate.</p> <p>11 And, initially, we thought we were going to migrate the</p> <p>12 token from the Ethereum token to the Stellar token,</p> <p>13 and, ultimately, decided that there would be a, you</p> <p>14 know, dual sort of role for the token.</p> <p>15 So it operates on a theory, and that is the</p> <p>16 token that was issued. But there was also a</p> <p>17 blockchain, a Stellar blockchain, and, I believe, it</p> <p>18 was operating on their test net. But in any case, you</p> <p>19 know, we call it the Kin blockchain, and it's both of</p> <p>20 them.</p> <p>21 So I'm not sure how it's going to work or</p> <p>22 how it does work or whether it even does work</p> <p>23 currently. But we talked about the issues with the</p> <p>24 migration, technically how that might happen. Because</p> <p>25 in order to analyze the money transmission issues, we</p>

<p style="text-align: center;">Page 74</p> <p>1 need to understand specifically what happens and 2 whether Kik -- I'm sorry. Yeah. Whether Kik or the 3 Kin Foundation -- although, at this time I think it was 4 just Kik -- had control over anybody's assets because 5 if you have control you are, you know, a money 6 transmitter and you must be licensed.</p> <p>7 Q Okay. So what was the issue that the -- 8 that this work with Stellar was trying to address?</p> <p>9 A The swap of the tokens. So it was 10 really -- it was really a technical discussion, and I 11 was listening in.</p> <p>12 Q Sure. But --</p> <p>13 A Trying to keep up.</p> <p>14 Q So what was the issue that this solution 15 was trying to address?</p> <p>16 A Why we were looking at Stellar?</p> <p>17 Q Yes.</p> <p>18 A The Ethereum blockchain is slow and 19 expensive, and Stellar is fast and the fees were much 20 lower. And for a consumer blockchain, Kik thought that 21 we needed to have the speed and the lower fees. We 22 ultimately forked it because the decision was made that 23 the -- if we created our own version of Stellar, that 24 we didn't have to charge any fees, and so that would 25 facilitate the development of the ecosystem.</p>	<p style="text-align: center;">Page 76</p> <p>1 cryptocurrency that would address the latency issues 2 with Stellar.</p> <p>3 Q Stellar?</p> <p>4 A I mean with Ethereum.</p> <p>5 Q With Ethereum, okay.</p> <p>6 So Stellar and Orbs were both possible 7 solutions?</p> <p>8 A Possible solutions.</p> <p>9 Q Okay. And -- but a decision was made to go 10 with Stellar?</p> <p>11 A Well, Orbs, I don't believe they had a 12 solution ready at the time that we were working with 13 Stellar.</p> <p>14 Q Okay. Is Kik still working with Orbs on 15 that?</p> <p>16 A No.</p> <p>17 Q So at some point some people made a 18 decision to go with Stellar instead of Orbs?</p> <p>19 A Right.</p> <p>20 Q And who made that decision?</p> <p>21 A It would have been the blockchain team and 22 Ted.</p> <p>23 Q Ted Livingston?</p> <p>24 A Ted Livingston.</p> <p>25 Q And the blockchain team are Kik employees?</p>
<p style="text-align: center;">Page 75</p> <p>1 Q Okay. And who at Kik was handling sort of 2 the substantive discussion that you were listening to 3 about the technical things, how to do it?</p> <p>4 A I believe Gadi, G-a-d-i, Sbrenik 5 S-b-r-e-n-i-k, and he heads our blockchain team in Tel 6 Aviv, would have been on that call. Tanner Philp would 7 have been on that call. Tal Cole might have been on 8 that call, but I don't think he -- and he's not with 9 the company anymore.</p> <p>10 Q And was Stellar the only way to solve this 11 problem that the Ethereum blockchain was slow and 12 extensive?</p> <p>13 A I don't know if it was the only other 14 option. We were also in discussion with Orbs.</p> <p>15 Q That's the company that had been CoinTree 16 and became Orbs?</p> <p>17 A Well, I don't know if it became Orbs.</p> <p>18 Q The same group of people?</p> <p>19 A It's the same group of people, right.</p> <p>20 Q Okay.</p> <p>21 A We had been talking with Orbs for quite a 22 long time.</p> <p>23 Q About the same issue?</p> <p>24 A About -- they were -- they would be 25 providing a blockchain solution for consumer use of</p>	<p style="text-align: center;">Page 77</p> <p>1 A Yes.</p> <p>2 Q Okay. And then earlier you said -- so -- 3 sorry. It sounds like -- am I right that after the 4 decision was made to go with Stellar then there was 5 another decision to fork something?</p> <p>6 A Fork Stellar. So Stellar's blockchain is 7 open-source software, and anyone at any time can copy 8 it and do what they want with it. And that's what they 9 did.</p> <p>10 Q Who is the "they"?</p> <p>11 A The blockchain team.</p> <p>12 Q At Kik?</p> <p>13 A At Kik.</p> <p>14 Q Okay. So forking it is copying it and?</p> <p>15 A Adjusting it and using it for a different 16 purpose. I mean, that's a common thing in blockchain, 17 to fork technology.</p> <p>18 Q And so is -- who is -- sorry.</p> <p>19 Is there now a forked --</p> <p>20 A A forked version of Stellar that we call 21 the Kin blockchain.</p> <p>22 Q The Kin blockchain?</p> <p>23 A Yes.</p> <p>24 Q Okay. And is that also open source?</p> <p>25 A I think it is, yes.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q Okay. And who is -- is someone sort of 2 overseeing the Kin blockchain today? 3 A Yes. Gadi Neteanel, N-e-t-e-a-n-e-l, Lev 4 L-e-v. 5 Q Yeah. 6 A Also in our Tel Aviv office. 7 Q So Kik employees are overseeing this Kin 8 blockchain? 9 A Right. 10 Q And have -- is the Kin -- you have to tell 11 me if I'm using the right kind of term. 12 Is the Kin blockchain operational? Like, 13 does it -- are people using it? 14 A Yes. 15 Q Or how does it get used today? 16 A The Kinit app. Have you heard of the Kinit 17 app? 18 Q I did, actually. 19 A Yes. Have you earned some Kin yet? 20 Q I have not. 21 A You should because you can use it to buy 22 things. 23 Q I am actually not allowed to own it. 24 A Oh, okay. It's quite interesting. So one 25 can download the app now on IOs, on Apple, as well as</p>	<p style="text-align: right;">Page 80</p> <p>1 because there were issues associated with that. The 2 exchanged value for value was a problem, you know, 3 being unlicensed, not a money transmitter. How would 4 that occur? We just -- it didn't go very far. 5 Q All right. It was an option people -- 6 A Plus, people felt that the Stellar 7 blockchain is limited in that it doesn't provide any 8 liquidity for anyone that wanted to move out of Kin 9 into fiat currency. 10 Q Why doesn't it? 11 A I'm not sure, but that's what I understand. 12 Q All right. Okay. It's - so your 13 understanding is it's not possible to move -- to -- 14 A It's not possible or it's not easy. It's 15 not, you know, fluid enough. So the best of both 16 worlds is how Ted describes it. And I think that's 17 probably accurate is that, you know, using both 18 blockchains allows people who want the security and 19 the -- I think what he says is the security and the 20 liquidity of the Ethereum blockchain can use that and 21 then that was what the tokens were issued on. But if 22 they want to use it in the ecosystem, the Stellar 23 blockchain provides that, the speed and the low fees. 24 Q And, as a practical matter, do people 25 actually give up their token on the Ethereum blockchain</p>
<p style="text-align: right;">Page 79</p> <p>1 in the Google store, Google play store and you can -- 2 one can -- I have answered polls and received tokens as 3 a result. So I have a little build up of tokens. I 4 have almost 600 tokens, and I can use them to buy a 5 \$5.00 Amazon gift card if I want. But I'm saving it 6 because I might want to use it to buy something else. 7 Q Okay. And the -- and that app -- 8 A Operates on the Kin blockchain. 9 Q The Kin blockchain, okay. And that app is 10 run -- it's also -- that's a Kik -- Kik employees run 11 that app? 12 A Kik employees developed that app, correct. 13 Q And I'm sorry. Does Kik own the app? 14 A Yeah. 15 MR. LEASURE: It's free? 16 THE WITNESS: It's free. See what you're 17 missing out on? Check it out. 18 BY MR. MITCHELL: 19 Q I'm just -- I'm looking at a document. I 20 don't think I need to show it to you. 21 At some point prior to the plan that led to 22 the Kin blockchain, there had been a different idea of 23 possibly having people exchange their Kin tokens on the 24 Ethereum blockchain for ones on the Stellar blockchain? 25 A That was floated, but it was never resolved</p>	<p style="text-align: right;">Page 81</p> <p>1 in order to get the token on the Stellar blockchain? 2 A Not currently. It's -- they're kind of 3 operating -- the Stellar blockchain currently, as I 4 understand it, is operating almost as the Kik points 5 were operating, and they're not swappable at the 6 moment. 7 Q But is that the long-term goal was to -- 8 A Oh, yeah. It's actually not that long of a 9 term goal. We have to have that functional. But there 10 were technical issues with it as well as legal 11 regulatory issues associated with it. So figuring that 12 out has kind of occupied quite a lot of people's times. 13 Q And the legal writing term are in the money 14 transfer kind of fund? 15 A Yes, in my -- yeah. Money transfer. 16 Q Okay. So can I -- I think you mentioned 17 some exchanges. 18 A Okay. 19 Q Tell -- you said your -- I think you said 20 you had prepared things for Binance? 21 A Binance. 22 Q And somebody else called? 23 A Huobi, H-u-o-b-i. 24 Q H-u-o-b-i. So let me take them one at a 25 time.</p>

<p style="text-align: center;">Page 82</p> <p>1 A Sure.</p> <p>2 Q What's Binance?</p> <p>3 A Binance is a cryptocurrency exchange.</p> <p>4 Q And how did you come -- did you actually</p> <p>5 deal with people at Binance directly?</p> <p>6 A I probably looked them up on the Internet</p> <p>7 and downloaded their application form, which was a</p> <p>8 Google doc.</p> <p>9 Q Okay.</p> <p>10 A Very likely.</p> <p>11 Q And what did you do?</p> <p>12 A Filled it out.</p> <p>13 Q And then what did you do once you filled it</p> <p>14 out?</p> <p>15 A E-mailed it to them or pushed send.</p> <p>16 Q And when was this?</p> <p>17 A Probably in February.</p> <p>18 Q Okay.</p> <p>19 MR. LEASURE: Of 2018?</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. MITCHELL:</p> <p>22 Q And was that just your idea to do?</p> <p>23 A No.</p> <p>24 Q So how did this -- how did you -- were you</p> <p>25 tasked with doing that?</p>	<p style="text-align: center;">Page 84</p> <p>1 corporation such as paying their employees or paying</p> <p>2 their rent, and those people might not be willing to</p> <p>3 accept Kin. So you'd want to transfer it into fiat in</p> <p>4 order to pay all the -- pay those bills and such.</p> <p>5 Q And so the added liquidity would make the</p> <p>6 participating in the Kin ecosystem more attractive to</p> <p>7 the developers?</p> <p>8 A Exactly.</p> <p>9 Q Okay. I'm sorry. So it sounds like the</p> <p>10 group decided to target the top ten?</p> <p>11 A Yes.</p> <p>12 Q And so you just got a few of the top ten?</p> <p>13 A Well, I have a list of the whole top ten,</p> <p>14 and it changes every day.</p> <p>15 Q But you only, though, reached out to</p> <p>16 Binance and --</p> <p>17 A Huobi.</p> <p>18 Q -- Huobi? You reached out to --</p> <p>19 A Actually, I don't know if that's how it's</p> <p>20 pronounced, but that's how I pronounce it.</p> <p>21 Q For today it will be.</p> <p>22 Did other people -- were other people</p> <p>23 tasked with approaching other exchanges?</p> <p>24 A No, no. I was supposed to do all of them,</p> <p>25 but, you know, bandwidth was limited.</p>
<p style="text-align: center;">Page 83</p> <p>1 A Yes.</p> <p>2 Q So how did you get tasked with doing that?</p> <p>3 A During an executive meeting or a planning</p> <p>4 meeting, members of the team expressed that liquidity</p> <p>5 was going to be very important for developers and that</p> <p>6 we already were included on a couple of exchanges, but</p> <p>7 they had low liquidity. And so having one of the</p> <p>8 larger exchanges list the token was advisable or</p> <p>9 preferable. And so, you know, we picked the top then</p> <p>10 exchanges by volume and started going down the list.</p> <p>11 Q Okay. Why was it preferable?</p> <p>12 A Because if there is more liquidity. If</p> <p>13 there are more tokens, if they can handle more tokens,</p> <p>14 then it would, you know, make the easiest, you know,</p> <p>15 transactions. You know, I guess, similar thinking to</p> <p>16 why would you list on the New York Stock Exchange</p> <p>17 versus the Pacific Stock Exchange.</p> <p>18 Q Okay. But how is that connected to</p> <p>19 developers? I think you --</p> <p>20 A Developers who receive grants through the</p> <p>21 partnership program or, ultimately, through the Kin</p> <p>22 rewards engine may want to redeploy that into their</p> <p>23 ecosystems and give opportunities to their users to</p> <p>24 earn or spend. But they also might need to spend it</p> <p>25 on, you know, the day-to-day necessities of running a</p>	<p style="text-align: center;">Page 85</p> <p>1 Q So Binance, you submitted an application?</p> <p>2 A I believe we did submit an application to</p> <p>3 Binance.</p> <p>4 Q And then what happened next?</p> <p>5 A I haven't heard anything from them since.</p> <p>6 Q Okay. And then -- what about -- what did</p> <p>7 you do in terms of Huobi?</p> <p>8 A The same. They had an application form.</p> <p>9 It was very similar to the Binance form, and I think</p> <p>10 they probably just copied it. And so I filled that</p> <p>11 out. Actually, I had my paralegal fill it out. I</p> <p>12 reviewed it, and then we provided it. And I don't</p> <p>13 think we heard anything back from them either.</p> <p>14 MR. LEASURE: Where are they based?</p> <p>15 THE WITNESS: I think they're Korean</p> <p>16 exchange.</p> <p>17 MR. LEASURE: We talked a few minutes ago</p> <p>18 about the desire to have Kin listed on exchanges or</p> <p>19 more liquid exchanges, correct?</p> <p>20 THE WITNESS: Yes.</p> <p>21 MR. LEASURE: Have you ever directly or</p> <p>22 indirectly received complaints from purchasers in the</p> <p>23 token distribution event that Kin wasn't being listed</p> <p>24 on major exchanges?</p> <p>25 THE WITNESS: I personally didn't receive</p>

<p style="text-align: center;">Page 86</p> <p>1 any, but I'm aware that there were comments made in 2 Reddit channels about that.</p> <p>3 MR. LEASURE: Okay. And they weren't 4 directly to you, I take it?</p> <p>5 THE WITNESS: No.</p> <p>6 MR. LEASURE: Right. Of course not.</p> <p>7 But did you -- you came to hear about those 8 comments?</p> <p>9 THE WITNESS: Yes, I did.</p> <p>10 MR. LEASURE: Who did you hear about those 11 from?</p> <p>12 THE WITNESS: From our communications team.</p> <p>13 MR. LEASURE: Okay.</p> <p>14 THE WITNESS: Because they look at those 15 channels and they monitor them.</p> <p>16 MR. LEASURE: Okay. Were they -- I just 17 want to make sure I'm not stepping on anything.</p> <p>18 Were your communications team seeking legal 19 advice from you in connection to those complaints on 20 Reddit?</p> <p>21 I just want to make sure I'm not --</p> <p>22 THE WITNESS: I don't know that they -- 23 they wanted an appropriate response.</p> <p>24 MR. LEASURE: Okay.</p> <p>25 THE WITNESS: And so in that regard it was</p>	<p style="text-align: center;">Page 88</p> <p>1 token distribution event?</p> <p>2 THE WITNESS: Some people expressed concern 3 about that.</p> <p>4 MR. LEASURE: Sure.</p> <p>5 THE WITNESS: I don't know if they were 6 developers or whether they were holders or whether they 7 were just interested bystanders.</p> <p>8 MR. LEASURE: Absolutely. Right. Okay.</p> <p>9 BY MR. MITCHELL:</p> <p>10 Q And the last one is Bittrex?</p> <p>11 A Yes.</p> <p>12 Q So how did you start dealing with Bittrex? What was the first step for you?</p> <p>13 A I believe we contacted Bill Shihara, who's 14 their CEO or somebody, you know, in the management team 15 at Bittrex to talk about potentially listing Kin on the 16 exchange. They then provided us with an application 17 form that we completed. And then I've had some 18 follow-up conversations with their in-house counsel, 19 and their outside counsel, O'Melveny & Myers.</p> <p>20 Q Okay. Did Kik ask Pantera to submit a listing application for the Kin token?</p> <p>21 A Yes.</p> <p>22 Q Tell me about that.</p> <p>23 A It was our understanding at that time that</p>
<p style="text-align: center;">Page 87</p> <p>1 a legal request.</p> <p>2 MR. LEASURE: Okay. So I don't want you to 3 tell me about what you told the communications team.</p> <p>4 What were people on Reddit, at least as far 5 as you could see -- was it fair to say they were 6 complaining about a lack of liquidity for Kin at the 7 time?</p> <p>8 THE WITNESS: Yes.</p> <p>9 MR. LEASURE: Okay. Do you know why? Why 10 would they care?</p> <p>11 THE WITNESS: I don't know why they would 12 care. I can conjecture, but I wouldn't have any 13 insight into their thought process.</p> <p>14 MR. LEASURE: Would you -- was it your 15 impression that they were --- that the people on Reddit 16 who were complaining were only developers?</p> <p>17 THE WITNESS: I don't think any of them 18 were developers. They were just people who were 19 holders.</p> <p>20 MR. LEASURE: Okay. So would you agree -- 21 well, based on that, is -- I want to be mindful of 22 privilege.</p> <p>23 Is it accurate then that there was concern 24 about getting access to liquid exchanges that was 25 expressed by developers and people who purchased in the</p>	<p style="text-align: center;">Page 89</p> <p>1 token issuers didn't apply directly, that a request had 2 to be made by someone who was a holder, and we 3 understood Pantera to be a holder through the SAFTs 4 process and that they also had a relationship with 5 Bittrex. So we asked Pantera to submit the application 6 on our behalf.</p> <p>7 Q Did someone draft an application?</p> <p>8 A The application that was submitted, yes, 9 was drafted by Tanner and me.</p> <p>10 Q Okay. And then you provided it to Pantera?</p> <p>11 A And we provided it to Pantera to provide to 12 Bittrex.</p> <p>13 Q Okay. And did Pantera provide it to Bittrex?</p> <p>14 A I assume so. They had the application. 15 They contacted me about it.</p> <p>16 Q Okay.</p> <p>17 MR. SCHLEGELMILCH: When did this happen?</p> <p>18 THE WITNESS: I believe it was in October 19 or November of 2017.</p> <p>20 MR. SCHLEGELMILCH: Thank you.</p> <p>21 BY MR. MITCHELL:</p> <p>22 Q At a subsequent point, did you submit a second application to Bittrex?</p> <p>23 A I don't think I submitted a second</p>

<p>Page 90</p> <p>1 application. I may have done -- I don't think so, 2 though. It would have been substantially the same 3 application.</p> <p>4 Q Did you submit it -- but did you -- 5 A Personally --</p> <p>6 Q Did you go in -- did you go back into 7 Bittrex's system and put in a new document to them? 8 A It sounds familiar, but I -- I might have 9 done that, yeah.</p> <p>10 Q Let me just give you what is a two-page 11 e-mail. 12 A Okay. 13 Q Real quick. 14 A Yeah. 15 Q This is marked Exhibit 137. 16 (SEC Exhibit No. 137 was marked for 17 identification.) 18 THE WITNESS: Okay. 19 BY MR. MITCHELL: 20 Q Bates number PANT-000002107 to 2108. And 21 on the top of the e-mail chain it has a date of 22 11/21/2017. 23 A Okay. 24 Q Do you see that? 25 A Yes.</p>	<p>Page 92</p> <p>1 there is an e-mail from someone named Katie Harrison? 2 A Yes. 3 Q And it includes you in the CC order? 4 A Yes. 5 Q Who is Katie Harrison? 6 A She's the general counsel at Bittrex. 7 Q Okay. And so what -- I guess what I'm 8 trying to figure out is at this point did she ask you 9 or did she say that someone from Kik needs to submit an 10 application? 11 A That's what I understood this to mean. 12 Q Okay. And so -- sorry. 13 Did you do at that some point? 14 A I believe so. 15 Q Okay. You see in her -- in Ms. Harrison's 16 e-mail in the detailed paragraph that starts "attached 17 is our listing application"? 18 A Yes. 19 Q And then it -- I'll just read it. It says, 20 "You'll notice that there is a document request list at 21 the end that tells you what else we need to do our 22 review. This includes a memo showing the analysis on 23 how the token is not a security using the Howey Test." 24 A Yes. 25 Q Okay. So did you understand that she was</p>
<p>Page 91</p> <p>1 Q Take your time. My first question is going</p> <p>2 to be: Do you recognize the document? 3 A I recognize the top part. I don't know 4 that I -- yeah. I guess I saw the last part. This -- 5 this business here doesn't -- this doesn't look 6 familiar to me, but everything else looks like I've 7 seen it. 8 Q All right. Sorry. The part that sort of 9 is a -- looks like maybe -- 10 A A graphic? 11 Q -- it's an image with account information 12 on the second page? 13 A Yeah, yeah, yeah. I don't remember seeing 14 that before. 15 Q Okay. Again, this was sort of 16 approached -- started doing this to discuss the dates. 17 A Okay. 18 Q So do you know who Matt Gorham, 19 G-o-r-h-a-m, is? 20 A Well, I see from this that he's the chief 21 operating officer for Pantera, but, other than that, I 22 don't know who he is. 23 Q Okay. 24 A I have never talked to him that I recall. 25 Q And then at the top of the page, do you see</p>	<p>Page 93</p> <p>1 asking that Bittrex was measuring whether a token was a 2 security based on the Howey Test? 3 A That's what -- that's what this -- it 4 requires a memo. 5 Q Okay. And did you provide one? 6 A I did not provide a memo. I provided, to 7 my knowledge, a copy of a letter that our counsel at 8 Blakes had written to the Ontario Securities Commission 9 because all of the memos that we have regarding our 10 analysis were privileged, and we didn't want to 11 inadvertently waive that privilege. 12 MR. LEASURE: Can I ask please -- Bittrex, 13 the only exchange you're aware of in connection with 14 Kin Applications was to ask for a memo showing a Howey 15 analysis? 16 THE WITNESS: I believe Binance and Huobi 17 also have some requirement to provide some kind of 18 analysis. 19 MR. LEASURE: Did -- was one provided to 20 them? 21 THE WITNESS: I would have provided the 22 same letter that -- if I provided it, it would have 23 been the same letter that I provided to Bittrex. 24 MR. LEASURE: Of Blakes letter, right? 25 THE WITNESS: The Blakes letter, yeah.</p>

<p style="text-align: right;">Page 94</p> <p>1 MR. LEASURE: Okay. Did Kik ever provide 2 any other memorandum or analysis to any exchange in 3 connection with an exchange application?</p> <p>4 THE WITNESS: Well, I -- they -- after they 5 had their outside attorneys look at it, O'Melveny asked 6 me to update the memorandum or the letter to take 7 account of recent enforcement actions and statements by 8 the chairman.</p> <p>9 MR. LEASURE: Someone at the SEC. And 10 we'll turn to that in a minute.</p> <p>11 THE WITNESS: Okay.</p> <p>12 MR. LEASURE: Just to make sure we're not 13 missing anything else.</p> <p>14 THE WITNESS: No. That's my only -- that's 15 the other thing that I have been asked for.</p> <p>16 MR. LEASURE: In your work dealing with 17 exchanges, did you ever get an impression of why 18 exchanges wanted that information?</p> <p>19 THE WITNESS: I -- it was my understanding 20 that they did not want to list a token that was 21 considered to be a security.</p> <p>22 MR. LEASURE: Got it. So right. That's -- 23 they just want to have something that -- something to 24 make a call --</p> <p>25 THE WITNESS: Yeah. It was their due</p>	<p>1 as opposed to other internal memoranda that might exist 2 regarding the Howey analysis?</p> <p>3 THE WITNESS: I discussed it with outside 4 counsel both at Blakes and at Cooley was advised not 5 to --</p> <p>6 MR. LEASURE: That's where we stop you. 7 Apologies. So you decided?</p> <p>8 THE WITNESS: I decided.</p> <p>9 MR. LEASURE: Got it.</p> <p>10 BY MR. MITCHELL:</p> <p>11 Q I'm going to mark -- I just marked as 12 Exhibit 139.</p> <p>13 (SEC Exhibit No. 139 was marked for 14 identification.)</p> <p>15 BY MR. MITCHELL:</p> <p>16 Q It's a document with a Bates number 17 KIK_00112748 to 2750 -- oh, no. 2752.</p> <p>18 A Yep.</p> <p>19 Q On the top it says, "Attachment B 1 to 20 Bittrex token application and listing agreement"?</p> <p>21 A Yes.</p> <p>22 Q Do you recognize this document?</p> <p>23 A Yes, I do.</p> <p>24 Q What is this?</p> <p>25 A It's an attachment to the Bittrex token</p>
<p style="text-align: right;">Page 95</p> <p>1 diligence process.</p> <p>2 MR. LEASURE: Thank you. Understood.</p> <p>3 BY MR. MITCHELL:</p> <p>4 Q I'm going to just mark as Exhibit 138 a 5 letter that's ongoing --</p> <p>6 A Okay.</p> <p>7 (SEC Exhibit No. 138 was marked for 8 identification.)</p> <p>9 BY MR. MITCHELL:</p> <p>10 Q 138 is -- has a Bates number SEC-Bittrex, 11 B-i-t-t-r-e-x, dash E-0000012 to 17.</p> <p>12 A Okay.</p> <p>13 Q Do you recognize this?</p> <p>14 A I do.</p> <p>15 Q What is this?</p> <p>16 A This is a letter that Ross McKee from 17 Blakes wrote to Pat Chaukos at the OSC, Ontario 18 Securities Commission in response to an outreach from 19 the OSC to Kik regarding our token distribution event.</p> <p>20 Q And was it the Blakes letter that you were 21 discussing earlier?</p> <p>22 A This is the one that I provided to Bittrex.</p> <p>23 Q I'm going to mark as Exhibit 139 --</p> <p>24 MR. LEASURE: Can I ask about Exhibit 138?</p> <p>25 Who decided to provide this Blakes letter</p>	<p>1 application and listing agreement.</p> <p>2 Q This is an -- did you submit this 3 attachment as part of your application?</p> <p>4 A Yes.</p> <p>5 Q And was it -- you know, were the things you 6 wrote in here true at the time that you wrote it?</p> <p>7 Or I'm sorry. Did you draft this?</p> <p>8 A I did draft it. It was, as with some of 9 the other things I've submitted, cribbed a lot from 10 other documents that were prepared by others, but I 11 believed them to be accurate when I submitted it. It 12 looks incomplete.</p> <p>13 Q What do you mean incomplete?</p> <p>14 A "The status of the work on the platform are 15 as follows," and it's -- there's nothing there. And, 16 also, I see that there was a triple X here on the last 17 page.</p> <p>18 Q So this is -- this is a draft?</p> <p>19 A So it -- I think it was actually submitted, 20 but, you know, we didn't do such a great job of 21 finalizing it.</p> <p>22 Q Okay. So I think you've already started to 23 tell some of the story. But what -- after you made the 24 submission, what happened next?</p> <p>25 A The operations person, Julian Yap, reached</p>

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1 out and said he was setting up a slack channel for us
 2 and that that was how we should communicate with them
 3 going forward. And I asked, does that mean that you've
 4 agreed to list us? And he said, no, it's under
 5 consideration.

6 And I think I spoke to Katie, also, and she
 7 said that part of the process was that their outside
 8 lawyer had to review the application and make a
 9 determination for them on the security issue and that,
 10 you know, they would reach out.

11 And so, thereafter, I heard from first a
 12 lawyer at Perkins Coie and then he told me that he was
 13 passing it on to a lawyer at O'Melveny. And so then I
 14 spoke with the lawyer at O'Melveny and he asked me to
 15 submit an updated -- update the Blakes letter based on
 16 recent developments at the Commission. And so I
 17 submitted a letter or a memo outlining why I thought
 18 that the token is not a security.

19 **Q Okay.**

20 A And that the Munchee decision and the
 21 chairman statement didn't change anything.

22 MR. MITCHELL: Well, he's actually just
 23 running out of tape. So let me -- I'm just going to
 24 ask a -- try to ask a simple question.

25 Actually, we're going to -- can we go off

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1 **96 to 97. And it has on the face it looks like an**
 2 **e-mail chain and at the top it has an e-mail, the top**
 3 **e-mail is dated January 8th, 2018.**

4 A Okay.

5 **Q Do you recognize this document?**

6 A I do.

7 **Q What is it?**

8 A It's an e-mail chain between me and certain
 9 people at Bittrex regarding the status of the
 10 application.

11 **Q Okay. So you asked what's the status of**
 12 **the application to Bittrex?**

13 A Yes.

14 **Q And then in the middle is there -- there's**
 15 **a January 8th, 2018, e-mail where Ms. Harrison asks did**
 16 **you send us your U.S. Securities analysis memo; do you**
 17 **see that?**

18 A Yes, uh-huh.

19 **Q And then above that, did you write back to**
 20 **her that, yes -- I'll just read it.**

21 "Yes, it was attached as Exhibit 5, a
 22 letter from our Canadian counsel at Blakes to the
 23 Ontario Securities Commission, which analyzes the
 24 securities issues."

25 A Yes.

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1 the record?

2 THE VIDEOGRAPHER: This ends disc number
 3 one. Going off the record. The time is now 12:04 p.m.
 4 (A brief recess was taken.)

5 THE VIDEOGRAPHER: This begins disc number
 6 two. We are back on the record.

7 The time on the monitor is 12:16 p.m.

8 BY MR. MITCHELL:

9 **Q During the break, did you have any**
 10 **substantive conversations about the case with the**
 11 **staff?**

12 A No.

13 **Q All right. I'm going to mark as**
 14 **Exhibit 140 a two-page document.**

15 **(SEC Exhibit No. 140 was marked for**
 16 **identification.)**

17 THE WITNESS: Okay.

18 BY MR. MITCHELL:

19 **Q It's Bates number SEC KIN 00 -- or no. Let**
 20 **me start over. It's Bates number is**
 21 **SEC-Bittrex-E-0000096. It has another Bates -- another**
 22 **number that might be a Bates number up top, but I don't**
 23 **know what that is.**

24 **So we've got Exhibit 140. Again, it's a**
 25 **two-page document with that Bates number that ends in**

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1 **Q Okay. And is that Exhibit 138 that we**
 2 **talked about before?**

3 A Yes.

4 MR. LEASURE: Is Exhibit 138 a U.S.
 5 Security analysis memo responsive to Bittrex's request?

6 THE WITNESS: Well, it doesn't analyze U.S.
 7 Securities laws, as you can see, but I felt that it was
 8 responsive to Bittrex's request.

9 MR. LEASURE: Can you explain why?

10 THE WITNESS: No. That would be my
 11 impressions and thoughts, and I'm going to invoke a
 12 privilege on that.

13 MR. LEASURE: Okay. Were you involved in
 14 the 2017 discussions with the Ontario Securities
 15 regulators?

16 THE WITNESS: I did not have any
 17 conversations with the securities regulators. I only had
 18 conversations with counsel.

19 MR. LEASURE: So you didn't meet them?

20 THE WITNESS: I did not meet with the
 21 Ontario Securities Commission or talk to them on the
 22 telephone.

23 MR. LEASURE: And the -- Kin was ultimately
 24 not sold in Canada, correct?

25 THE WITNESS: That's correct.

<p style="text-align: right;">Page 102</p> <p>1 MR. LEASURE: And was that as a result of 2 negative feedback from the OSC?</p> <p>3 MR. CADIGAN: Can you answer that question 4 without getting into discussions with counsel?</p> <p>5 THE WITNESS: Yeah. I really can't answer 6 that without getting into discussions with counsel.</p> <p>7 MR. SCHLEGELMILCH: So the Blakes letter, 8 Exhibit 138, was submitted to the Ontario Securities 9 Commission in connection with the Kin offering; is that 10 correct?</p> <p>11 THE WITNESS: Correct.</p> <p>12 MR. SCHLEGELMILCH: And the OSC, the 13 Ontario Securities Commission, provided feedback based 14 on the Blakes letter, correct?</p> <p>15 THE WITNESS: They had further discussions 16 with our counsel at Blakes.</p> <p>17 MR. SCHLEGELMILCH: And you can't tell us 18 what those conversations were, what OSC told Blakes; is 19 that your testimony?</p> <p>20 THE WITNESS: My only knowledge of those is 21 through conversations that I had with Blakes.</p> <p>22 MR. SCHLEGELMILCH: Okay. So the answer to 23 my question is: Sitting here today, you can't tell us 24 what --</p> <p>25 THE WITNESS: I won't tell you because of</p>	<p style="text-align: right;">Page 104</p> <p>1 MR. CADIGAN: Can you answer that question 2 without getting into discussions with outside counsel 3 or --</p> <p>4 THE WITNESS: No. I can't answer that 5 question without resorting to conversations with 6 counsel.</p> <p>7 MR. SCHLEGELMILCH: Okay. And you provided 8 Exhibit 138, the Blakes letter, to Bittrex prior to 9 January 8th, 2018, correct?</p> <p>10 THE WITNESS: Correct.</p> <p>11 MR. SCHLEGELMILCH: Did you -- was -- did 12 you tell Bittrex that Kin was not offered in Canada?</p> <p>13 THE WITNESS: I don't know whether I did or 14 not. I don't think I did.</p> <p>15 MR. SCHLEGELMILCH: Okay. Do you have a -- 16 I -- let me drill down. Do you have a memory of 17 providing that information to Bittrex?</p> <p>18 THE WITNESS: I don't have any memory of 19 providing that information to Bittrex.</p> <p>20 MR. SCHLEGELMILCH: Okay. Do you have a 21 memory of choosing not to provide it to Bittrex?</p> <p>22 THE WITNESS: I -- if I didn't provide the 23 information, it's because they didn't ask me.</p> <p>24 MR. LEASURE: Okay. And Kin was also not 25 offered to Chinese purchasers; is that correct?</p>
<p style="text-align: right;">Page 103</p> <p>1 the attorney-client privilege.</p> <p>2 MR. SCHLEGELMILCH: Hang on. I just want 3 to make sure the record's clear.</p> <p>4 THE WITNESS: Okay. Yeah. That's fine.</p> <p>5 MR. GIBBS: Yes, it. So let me throw in 6 \$0.02. I think what she's saying is she can't tell you 7 what the Canadian regulators said because she wasn't 8 there. All she can tell you is what her lawyers told 9 her about that meeting.</p> <p>10 MR. SCHLEGELMILCH: That's -- I understood 11 that.</p> <p>12 MR. GIBBS: Okay. I just -- I wanted to 13 make sure it's clear. I didn't think it was yet.</p> <p>14 MR. SCHLEGELMILCH: It may not be clear, 15 but I understood it.</p> <p>16 MR. GIBBS: Okay.</p> <p>17 THE WITNESS: Okay.</p> <p>18 MR. SCHLEGELMILCH: Okay. So now that I 19 understand the situation -- and, ultimately, Kin was 20 not offered to Canadian residents?</p> <p>21 THE WITNESS: Correct.</p> <p>22 MR. SCHLEGELMILCH: Okay. Can you tell me 23 whether there is a causal connection between the 24 feedback provided from the OSC and Kin not being 25 offered to Canadian residents?</p>	<p style="text-align: right;">Page 105</p> <p>1 THE WITNESS: That's right.</p> <p>2 MR. LEASURE: Do you know why that is?</p> <p>3 THE WITNESS: Yes.</p> <p>4 MR. LEASURE: Why is that?</p> <p>5 THE WITNESS: It was a --</p> <p>6 MR. CADIGAN: Is that information -- I just 7 want to make it clear --</p> <p>8 THE WITNESS: Yeah. No. It's information 9 that's in my knowledge as a result of conversations 10 with counsel. I mean, I can say generally that it was 11 because of recent regulatory or government action in 12 China immediately prior to the TDE in which they -- 13 reports were that they declared cryptocurrency illegal.</p> <p>14 MR. SCHLEGELMILCH: So Kin was not offered 15 to -- in the -- well, in the September time period, was 16 not offered to New York residents that you know of, 17 correct?</p> <p>18 THE WITNESS: Yes.</p> <p>19 MR. SCHLEGELMILCH: It was not offered to 20 residents of the state of Washington?</p> <p>21 THE WITNESS: Yes.</p> <p>22 MR. SCHLEGELMILCH: It was not offered to 23 Canadian citizens?</p> <p>24 THE WITNESS: Right.</p> <p>25 MR. SCHLEGELMILCH: And it wasn't offered</p>

<p style="text-align: center;">Page 106</p> <p>1 to Chinese citizens; is that correct?</p> <p>2 THE WITNESS: Residents.</p> <p>3 MR. SCHLEGELMILCH: Residents.</p> <p>4 THE WITNESS: Uh-huh.</p> <p>5 MR. SCHLEGELMILCH: Was is -- let me make</p> <p>6 the same distinction then with Canadians.</p> <p>7 Was it offered to Canadian residents?</p> <p>8 THE WITNESS: It was not offered to</p> <p>9 Canadian residents.</p> <p>10 MR. SCHLEGELMILCH: Okay.</p> <p>11 THE WITNESS: Other than, there were some</p> <p>12 employees who were Canadian.</p> <p>13 MR. SCHLEGELMILCH: And they were permitted</p> <p>14 to buy?</p> <p>15 THE WITNESS: They were permitted to</p> <p>16 participate.</p> <p>17 MR. SCHLEGELMILCH: Okay. Are there any</p> <p>18 other jurisdictions to which -- that you're aware of</p> <p>19 that Kik decided not to sell Kin into, other than the</p> <p>20 four we've identified?</p> <p>21 THE WITNESS: Well, I think we didn't</p> <p>22 permit any registrations in Iran and other sanctioned</p> <p>23 countries.</p> <p>24 MR. SCHLEGELMILCH: Okay. So other than</p> <p>25 Iran, can you --</p>	<p style="text-align: center;">Page 108</p> <p>1 A Yeah.</p> <p>2 Q And let me just -- and did he ask for some</p> <p>3 additional analysis?</p> <p>4 A He may have done -- if he did, it's</p> <p>5 probably in that e-mail you're about to hand me.</p> <p>6 Q Yeah. And the spelling of his name is</p> <p>7 there, too.</p> <p>8 A Okay.</p> <p>9 Q I'll give you what has been marked as</p> <p>10 Exhibit 141 which is a multi-page document with the</p> <p>11 Bates number KIK_00112557 through 559.</p> <p>12 (SEC Exhibit No. 141 was marked for</p> <p>13 identification.)</p> <p>14 BY MR. MITCHELL:</p> <p>15 Q And, again, on it's face it's an e-mail</p> <p>16 chain that seems to include a lawyer at Perkins Coie</p> <p>17 named Fredrick Fedynyshyn. I'm sure that's not how</p> <p>18 it's pronounced, but his last name is spelled</p> <p>19 F-e-d-y-n-y-s-h-y-n.</p> <p>20 Is that the Perkins Coie lawyer you were</p> <p>21 thinking of?</p> <p>22 A Yes.</p> <p>23 Q Okay. So you had a conversation with him</p> <p>24 and then got an e-mail from him?</p> <p>25 A I think I talked to him on the telephone.</p>
<p style="text-align: center;">Page 107</p> <p>1 THE WITNESS: I don't know even -- I mean,</p> <p>2 if anybody even tried to register from there, but we</p> <p>3 would not have permitted them.</p> <p>4 MR. SCHLEGELMILCH: Okay.</p> <p>5 THE WITNESS: And I don't know of any other</p> <p>6 countries.</p> <p>7 MR. SCHLEGELMILCH: Thank you.</p> <p>8 BY MR. MITCHELL:</p> <p>9 Q So I think in the Bittrex you had -- you</p> <p>10 were communicating with Ms. Harrison and told her, yes,</p> <p>11 we've provided the U.S. --</p> <p>12 A Memo.</p> <p>13 Q What happened next? Like, what did you --</p> <p>14 what was the -- what happened after that, in terms of</p> <p>15 Bittrex?</p> <p>16 A I had a phone call with a lawyer of theirs,</p> <p>17 outside counsel from Perkins Coie, and then I had an</p> <p>18 e-mail from him indicating that he was passing the</p> <p>19 matter on to a lawyer at O'Melveny & Myers.</p> <p>20 Q Okay.</p> <p>21 A And that I should continue to discuss it</p> <p>22 with him.</p> <p>23 Q Great. And is that Fredrick?</p> <p>24 A Fedynyshyn or something like that?</p> <p>25 Q Yeah.</p>	<p style="text-align: center;">Page 109</p> <p>1 Q Okay. What -- did he call -- what -- did</p> <p>2 he call to ask questions?</p> <p>3 A Might have just been an introductory call.</p> <p>4 I don't recall the substance of it, but what's covered</p> <p>5 in this e-mail from January 11th is substantially the</p> <p>6 gist of any conversation I had with him.</p> <p>7 Q So in this e-mail he asks for an update --</p> <p>8 you to update -- I'm reading at the bottom of the first</p> <p>9 page.</p> <p>10 A Yeah.</p> <p>11 Q "We would, therefore, appreciate it if you</p> <p>12 would update the analysis in the letter to address</p> <p>13 these and all of the relevant developments that may</p> <p>14 affect whether the Kin token may be found to qualify as</p> <p>15 an investment contract subject to regulation under U.S.</p> <p>16 securities laws."</p> <p>17 A Yes.</p> <p>18 Q That was what he was asking for?</p> <p>19 A Yes.</p> <p>20 Q Okay. And then he provides some specifics</p> <p>21 on the second page?</p> <p>22 A Uh-huh.</p> <p>23 Q So then what happened next?</p> <p>24 A I responded that we would work to get</p> <p>25 something back to him.</p>

<p style="text-align: right;">Page 110</p> <p>1 Q As a practical matter, by the time you got 2 back to him, Bittrex had moved from the Perkins lawyer 3 to an O'Melveny lawyer? 4 A Correct. 5 Q And did you provide that to him? 6 A Yes. 7 Q Okay. I'm going to mark a document, which 8 is Exhibit 142. 9 (SEC Exhibit No. 142 was marked for 10 identification.) 11 BY MR. MITCHELL: 12 Q It has the Bates number -- long Bates 13 number Bittrex_SUPP_production_07.05.2018_001 through 14 009. 15 A Actually ten. 16 Q Ten? It goes all the way to ten but ten is 17 blank. 18 A Uh-huh. 19 Q Again, take all the time you need. But 20 first question is just going to be: Do you recognize 21 this? 22 A Yes, I recognize this. 23 Q What is -- what -- tell me -- start with 24 the e-mail on the first page. 25 A Okay. </p>	<p style="text-align: right;">Page 112</p> <p>1 Clayton that they asked us to consider and asked if 2 we -- if that changed in any way, our analysis 3 regarding the Kin token. 4 Q And that -- the they was Bittrex asked for 5 it? 6 A Well, through their counsel. 7 Q Okay. And sorry. You just said it's in a 8 letter not in an opinion? 9 A Yes. 10 Q What did you mean? 11 A Well, an opinion of counsel is a specific 12 sort of thing, and I disclaim it being an opinion. It 13 was simply an analysis of -- you know, my analysis. I 14 was not of the opinion as one does in legal matters, 15 rendering a legal opinion as such. 16 Q Okay. This just may not be an area that I 17 practice a lot in. Are there other parts in your 18 practice where you have actually given something called 19 a legal opinion? 20 A Uh-huh. 21 Q And so what kind context does that come up? 22 A Usually in a financing kind of matter in 23 which you -- well, also securities filings where you 24 opine that the securities that you're registering are, 25 you know, valid -- what are the three things -- validly </p>
<p style="text-align: right;">Page 111</p> <p>1 Q What is that e-mail? 2 A So the e-mail on the first page is me 3 reaching out to Katie and Julian Yap regarding the 4 status of our application and indicating that we had 5 submitted a further analysis as requested by counsel 6 and Katie asking if I had submitted a memo to O'Melveny 7 and me reiterating that, yes, I had done that. 8 Q Okay. 9 A And another copy is attached. 10 Q Right. So you actually attached a prior 11 e-mail that you'd sent to a lawyer at O'Melveny & 12 Myers? 13 A Correct. 14 Q Okay. So is the attachment -- this 15 attachment is an e-mail you sent to O'Melveny & Myers 16 in response to the questions raised by the Perkins Coie 17 lawyer? 18 A Yes. 19 Q So, I guess, at this point we're in the 20 middle part of February of 2018. 21 What happened next, in terms of Bittrex? 22 A So I sent a letter to -- or a memo. It was 23 an e-mail. It was in the form of a letter, not an 24 opinion, analyzing developments in the U.S. law, 25 specifically Munchee and statements made by chairman </p>	<p style="text-align: right;">Page 113</p> <p>1 issued, fully paid, and non-accessible. In financing 2 that -- the enforceability of the financing documents 3 has against the debtor. In connection with a 4 change-of-transfer agent, I've given opinions regarding 5 the outstanding common stock being all of the common 6 stock that there was. 7 And in all of those cases, there's a very 8 precise meaning for each of the opinions that is given, 9 and, you know, one follows a certain form of due 10 diligence. And it's not the same as simply writing a 11 memo that is an analysis. 12 MR. LEASURE: Right. That does -- I'm 13 flashing back to my early days at the law firm. It's 14 a -- an opinion letter is a kind of -- a formal thing 15 used in various business context, right? 16 THE WITNESS: Exactly. 17 MR. LEASURE: Okay. As an aside -- and 18 we'll turn back to this document -- were efforts ever 19 made to get -- to find an outside law firm that would 20 prepare an opinion letter to exchanges? 21 THE WITNESS: No. I should correct that. 22 We did ask Cooley if they -- 23 MR. CADIGAN: Are you going to get into 24 conversations with Cooley? 25 THE WITNESS: I was just going to say what </p>

<p style="text-align: center;">Page 114</p> <p>1 we had asked them to provide, and they did not agree to 2 provide an opinion.</p> <p>3 MR. CADIGAN: I would instruct you not to 4 state what you just did.</p> <p>5 THE WITNESS: Okay. Strike that.</p> <p>6 MR. LEASURE: Did any purchaser of Kin 7 offer to help find a law firm to provide an opinion?</p> <p>8 THE WITNESS: A purchaser of Kin?</p> <p>9 MR. LEASURE: Yes.</p> <p>10 THE WITNESS: Not that I'm aware of. And 11 if -- not one that I would have accepted.</p> <p>12 MR. LEASURE: Got it.</p> <p>13 BY MR. MITCHELL:</p> <p>14 Q Okay. So I may come back to the 15 attachment, but the -- I apologize.</p> <p>16 What's the date at the top of --</p> <p>17 A February 13th.</p> <p>18 Q Great. Exhibit 142. So then -- I'm just 19 trying to kind of move this story ahead.</p> <p>20 What happened after that? Did Bittrex get 21 back with an answer? What happened?</p> <p>22 A Well, as I mentioned before, we met up with 23 Katie Harrison at consensus, which I thought was in 24 January but I think it was after this was submitted. 25 So I may be wrong on those dates. But, you know, we</p>	<p style="text-align: center;">Page 116</p> <p>1 Q What is it?</p> <p>2 A It's a letter -- an e-mail I wrote to Bill 3 Shihara just following up on the application, 4 reiterating that we had provided everything that they 5 had been -- that they requested and spoken with their 6 attorneys and hoping to discuss the project with a view 7 to getting the token listed on Bittrex.</p> <p>8 Q Okay. And, again, I've asked this kind of 9 question before, but when you wrote this e-mail to 10 Mr. Shihara, was everything true as far as you 11 understood at the time?</p> <p>12 A Yes.</p> <p>13 Q And there is a -- in the bottom of the 14 first para -- first full paragraph in your e-mail, 15 there's a line that says, "We also had conversations 16 this week with Eric Sibbit, S-i-b-b-i-t, at O'Melveny 17 to discuss our legal analysis and to provide an 18 overview of the status of the project."</p> <p>19 A Uh-huh.</p> <p>20 Q Did you have conversations with Mr. Sibbit 21 at O'Melveny?</p> <p>22 A I do recall having a conversation with Eric 23 Sibbit, and I presume it was that week since I said it 24 was.</p> <p>25 Q Who was on -- do you remember who was on</p>
<p style="text-align: center;">Page 115</p> <p>1 just talked generally about the application and did 2 they need any other information from us. And the 3 indication was no.</p> <p>4 I know that I also reached out to Bill 5 Shihara, who is the CEO, and asked if there were any 6 questions and if he could arrange a phone call with Ted 7 Livingston, our CEO, and I believe that did happen.</p> <p>8 Q Why did you reach out to him?</p> <p>9 A Because there had been no action taken on 10 our application.</p> <p>11 Q All right. And that made this -- I'm going 12 to give you Exhibit 143. Just one page.</p> <p>13 (SEC Exhibit No. 143 was marked for 14 identification.)</p> <p>15 BY MR. MITCHELL:</p> <p>16 Q And down at the bottom it says 17 SEC-Bittrex-E-0000029.</p> <p>18 A Okay.</p> <p>19 Q Do you see that?</p> <p>20 A Yes.</p> <p>21 Q Again, take your time and then just tell me 22 do you recognize this document?</p> <p>23 A Okay.</p> <p>24 Q What -- do you recognize it?</p> <p>25 A Yes.</p>	<p style="text-align: center;">Page 117</p> <p>1 the call other than you and Mr. Sibbit?</p> <p>2 A There's a possibility he had an associate 3 or another O'Melveny partner present.</p> <p>4 Q Sure. Anybody on your side?</p> <p>5 A I don't recall.</p> <p>6 Q And what did you -- what did you discuss 7 with him about your legal analysis?</p> <p>8 A I don't recall specifically. It probably 9 would have been a reiteration of the letter I sent to 10 Fred at Perkins Coie. No, no -- is that the one?</p> <p>11 Yeah. No. The earlier.</p> <p>12 Q Yeah.</p> <p>13 A It probably just would have been the 14 February 1 letter addressed to Eric just to ask if he 15 had any questions or if he had any clarifying.</p> <p>16 Q Did you discuss legal analysis beyond what 17 was in that e-mail to the O'Melveny --</p> <p>18 A Not that I recall.</p> <p>19 Q And then the second paragraph starts, "We 20 very much appreciate the rigor with which Bittrex 21 approaches token offerings and for that reason, view 22 being listed on Bittrex is a corporate imperative."</p> <p>23 Do you see?</p> <p>24 A Uh-huh.</p> <p>25 Q Why?</p>

<p style="text-align: center;">Page 118</p> <p>1 A Other than what it says, I don't really 2 have any comment about it.</p> <p>3 Q Well, what -- why was it a corporate 4 imperative?</p> <p>5 A Kik viewed Bittrex as one of the exchanges 6 that was one of the top ten exchanges and had a good 7 reputation.</p> <p>8 Q Sorry. How did that make it a Kik 9 corporate imperative?</p> <p>10 A Well, because, as I mentioned earlier, 11 providing liquidity to our developers by being listed 12 on a more active exchange was a corporate imperative. 13 And so it could have been a disreputable exchange. 14 There were plenty that would take your ether and list 15 you, but that wasn't what we were hoping to achieve.</p> <p>16 Q Why?</p> <p>17 A Because, you know, we're a -- we're a 18 project that views our reputation and our compliance 19 with all applicable regulations as being very 20 important.</p> <p>21 Q So that made Bittrex --</p> <p>22 A And so we wanted to do business with people 23 who also feel that way.</p> <p>24 MR. LEASURE: I'm going to point you back 25 to Exhibit 142. And that's the -- that looks like the</p>	<p style="text-align: center;">Page 120</p> <p>1 the second sentence says -- sorry. 2 Again, was this true -- to the best of your 3 knowledge, was it true when you wrote it?</p> <p>4 A Yes.</p> <p>5 Q So the second sentence says, "We have 6 several business" -- I'm sorry. It says, "Can we 7 please get an update on where Bittrex is with respect 8 to our listing application? We have several business 9 initiatives that may be impacted by this and would like 10 to know where things stand and what alternative paths 11 we might need to take."</p> <p>12 So I guess, what business initiatives?</p> <p>13 A As we sit here today, I actually don't 14 recall.</p> <p>15 Q Okay. And did you at -- did this e-mail 16 spark any conversation with them about what -- about 17 where things stand or alternative paths?</p> <p>18 A I did not discuss with Bittrex any 19 alternative paths that we might take. I do know that 20 Bill Shihara and Ted Livingston did have a 21 conversation. I don't know when it was relative to 22 this letter. I wasn't present for that conversation. 23 He told me about it afterward.</p> <p>24 Q Okay. And did he just -- was he just 25 telling you sort of so you knew the facts or was he</p>
<p style="text-align: center;">Page 119</p> <p>1 substantive letter, correct --</p> <p>2 THE WITNESS: Sure.</p> <p>3 MR. LEASURE: -- you wrote to Mr. Sibbit at 4 O'Melveny. Actually, let Brent proceed. I think I cut 5 off his flow.</p> <p>6 BY MR. MITCHELL:</p> <p>7 Q There is just another similar e-mail that I 8 just wanted to ask about. It's Exhibit 144 now, a 9 single page document SEC-Bittrex-E-0000057.</p> <p>10 A Uh-huh.</p> <p>11 (SEC Exhibit No. 144 was marked for 12 identification.)</p> <p>13 BY MR. MITCHELL:</p> <p>14 Q And I'm going to hand it to your lawyer and 15 give everybody a chance to read it.</p> <p>16 A Okay.</p> <p>17 Q Again, do you recognize the document?</p> <p>18 A Yes.</p> <p>19 Q What is it?</p> <p>20 A It's an e-mail from me to Katie Harrison 21 and Julian Yap at Bittrex asking about the status of 22 the listing application.</p> <p>23 Q So by this, they still had not gotten back?</p> <p>24 A Correct.</p> <p>25 Q Okay. And, again, this one -- there's a --</p>	<p style="text-align: center;">Page 121</p> <p>1 telling you seeking some type of legal advice?</p> <p>2 A I don't think there was any legal advice 3 sought in that conversation. It was just repeating 4 what he had discussed with Bill.</p> <p>5 Q So can you tell us what he said?</p> <p>6 A So he -- my recollection is that Bill was 7 supportive and believed that there was no reason why 8 Bittrex couldn't or wouldn't list the token and said 9 that he would contact his business people.</p> <p>10 I may be reading more into it than actually 11 occurred, but that was my impression. But I do recall 12 the comment being made relayed to me through Ted that 13 the Kin project certainly met their standards.</p> <p>14 Q Okay. So then take me from this point sort 15 of after this did you hear from Bittrex about the 16 listing?</p> <p>17 A No.</p> <p>18 Q And have you heard anything since then?</p> <p>19 A We've tried reaching out, and it's pretty 20 much been radio silence.</p> <p>21 MR. MITCHELL: Okay.</p> <p>22 MR. LEASURE: Do you know why Bittrex 23 hasn't spoken?</p> <p>24 THE WITNESS: I can only assume that 25 they're getting some heat business from regulatory</p>

<p style="text-align: center;">Page 122</p> <p>1 agencies that are preventing them from taking business 2 actions that they otherwise would be taking. 3 MR. LEASURE: The SEC? 4 THE WITNESS: You tell me. 5 MR. LEASURE: Well, what's your assumption 6 based on? 7 THE WITNESS: Public sentiments. 8 BY MR. MITCHELL: 9 Q Can I take you back to Exhibit 142? 10 It's -- 11 A Yes. 12 Q The front of it is the e-mail -- 13 A Of course. 14 Q -- in between you and Ms. Harrison, but 15 then the attachment was the e-mail from you to 16 Mr. Sibbit. 17 A Okay. 18 Q I may have already asked this. I apologize 19 if I did. 20 But when you wrote this e-mail to 21 Mr. Sibbit, was this all true as far as you understood 22 at the time? 23 A As far as I understood at the time. 24 Q Okay. I just want to go through a couple 25 sections of it. In the second paragraph -- I'm looking</p>	<p style="text-align: center;">Page 124</p> <p>1 the Munchee offering? 2 A I reviewed the Munchee order. I reviewed 3 the Clayton statement that was published on the SEC 4 website, and I reviewed, to the extent I could obtain 5 it, copies of the Munchee white paper and other 6 publicly available information. 7 Q Great. And I apologize. I was actually 8 going -- I intended to point you at the bottom of the 9 fourth paragraph. 10 A Uh-huh. 11 Q Do you see there's a sentence that says, 12 "However, having reviewed the order and the Munchee 13 white paper along with the other available materials"? 14 A Uh-huh. 15 Q Okay. So that was -- what I meant to ask 16 is -- so you just mentioned you've reviewed other 17 things. 18 What other things other than the order and 19 the white paper? 20 A I can't recall what there might have been. 21 Maybe a listing or a registration, press releases. I 22 think they had some comments in like medium channels or 23 some public statements that were made. 24 Q And that continues. It says, "However, 25 having reviewed the order and the Munchee white paper</p>
<p style="text-align: center;">Page 123</p> <p>1 at the February 2nd -- the date on the top of it says 2 February 1st, but it looks like it's an e-mail sent 3 February 2nd. 4 A Okay. 5 Q Do you see where I see that? 6 A Uh-huh, yes. 7 Q In the second paragraph it says, "As you 8 are aware, Kik filed an application to list Kin tokens 9 on the Bittrex exchange. In connection with that 10 application, we provided a letter from our Canadian 11 counsel." And then it goes on. 12 Do you see that? 13 A Uh-huh. 14 Q Was that -- were you referring to the 15 Blakes letter that we've already discussed that we 16 marked? 17 A Yes. 18 Q Okay. And then there is a description of 19 an SEC cease and desist proceeding with a company 20 called Munchee, Inc. And I'm sorry. I'm looking for 21 the language. I apologize. I'm literally just looking 22 for a line. I was trying to find it so I can point you 23 to it. 24 All right. Well, in preparation for 25 writing this, do you remember what you reviewed about</p>	<p style="text-align: center;">Page 125</p> <p>1 along with the other available materials, we continue 2 to believe that Kin is not a security and the Kin TD 3 was not subject to registration under the Securities 4 Act." 5 Do you see where I read that? 6 A I do. 7 Q And then is -- the discussion that sort of 8 follows this in the e-mail, is that an explanation of 9 why Kik believes that the Kin TD was not subject to 10 registration under the Securities Act? 11 A Well, it speaks for itself. I mean, it 12 says what it says. It was an argument distinguishing 13 Kin tokens from the MUN tokens. 14 Q That's sort of -- that's what the remainder 15 of the e-mail is? 16 A Yeah, I think so. 17 Q In fact, the top of the second page, 18 there's a line that says, "We believe that Kin tokens 19 are distinguishable from MUN tokens for several 20 reasons." 21 A Uh-huh. 22 Q Do you see where I read that? 23 A Yes. 24 Q And was that true at the time when you 25 wrote it?</p>

<p style="text-align: center;">Page 126</p> <p>1 A Yeah, I think it was true.</p> <p>2 Q Okay. And then did you write out those</p> <p>3 reasons in the -- did you write out some of those</p> <p>4 reasons in the remainder of the e-mail?</p> <p>5 A I wrote the e-mail.</p> <p>6 Q Is this -- is the remainder of the</p> <p>7 subsequent part of that e-mail after that line some of</p> <p>8 the reasons or the reasons why you believe that the Kin</p> <p>9 tokens were distinguishable from MUN tokens?</p> <p>10 A Yes.</p> <p>11 Q Okay. So then right after that it says,</p> <p>12 "In particular, the MUN tokens had no current utility</p> <p>13 at the time of offering. Although MUN would</p> <p>14 theoretically reflect some utility in its proposed</p> <p>15 ecosystem for earning and using the tokens, no investor</p> <p>16 could use the tokens immediately after purchasing them</p> <p>17 as the features had not yet been developed. Munchee</p> <p>18 had not signed up a single restaurant that might have</p> <p>19 been reviewed in the proposed application."</p> <p>20 Do you see where I read that?</p> <p>21 A Yes.</p> <p>22 Q So I guess, why is this here?</p> <p>23 A I'm not going to answer that because it</p> <p>24 gets into my thought process about the analysis, the</p> <p>25 legal analysis.</p>	<p style="text-align: center;">Page 128</p> <p>1 Q If they had been sold, was it your opinion</p> <p>2 that the MUN tokens had no utility -- would have had no</p> <p>3 utility?</p> <p>4 A I'm not going to answer that.</p> <p>5 MR. GIBBS: Are we going to have a legal</p> <p>6 debate with the witness --</p> <p>7 MR. MITCHELL: I was just trying to</p> <p>8 understand --</p> <p>9 (Simultaneous speakers.)</p> <p>10 MR. CADIGAN: What she wrote is here, and</p> <p>11 you're entitled to that. But what goes into the</p> <p>12 thought process which was, you know, written with, you</p> <p>13 know, advice of counsel and her thought process on</p> <p>14 that, we are going to instruct her not to answer.</p> <p>15 MR. MITCHELL: That sounds fine. We got</p> <p>16 hours here on the record of me trying to be --</p> <p>17 (Simultaneous speakers.)</p> <p>18 MR. CADIGAN: And you've been very good</p> <p>19 about that. I appreciate that.</p> <p>20 MR. MITCHELL: I'm trying to word a</p> <p>21 question that she can answer. And if you're going to</p> <p>22 instruct her, that's fine.</p> <p>23 BY MR. MITCHELL:</p> <p>24 Q When you wrote the letter, was it your</p> <p>25 understanding that MUN tokens would have been issued on</p>
<p style="text-align: center;">Page 127</p> <p>1 Q Okay. Well, was a concept of the utility</p> <p>2 part of your analysis under the Howey Test?</p> <p>3 A I'm not going to talk to you about my</p> <p>4 thought process regarding the analysis with the Howey</p> <p>5 Test.</p> <p>6 Q Okay.</p> <p>7 MR. SCHLEGELMILCH: Was this letter</p> <p>8 prepared in anticipation of litigation? Did you write</p> <p>9 this with litigation in mind?</p> <p>10 THE WITNESS: I wrote this at a time when</p> <p>11 the company was under investigation by the SEC. So I</p> <p>12 certainly was mindful of litigation.</p> <p>13 MR. SCHLEGELMILCH: Okay.</p> <p>14 THE WITNESS: Not for the specific purpose</p> <p>15 perhaps.</p> <p>16 BY MR. MITCHELL:</p> <p>17 Q The MUN tokens that you're just -- that are</p> <p>18 described here, those were tokens that Munchee Company</p> <p>19 had sort of prepared to sell?</p> <p>20 A As I understand it from the enforcement</p> <p>21 release.</p> <p>22 Q And if they had been sold, sorry. I'll</p> <p>23 just state for the record Munchee never sold anything.</p> <p>24 They shut down.</p> <p>25 A Right.</p>	<p style="text-align: center;">Page 129</p> <p>1 the Ethereum blockchain?</p> <p>2 A I don't know if they were going to be</p> <p>3 issued on the Ethereum blockchain frankly.</p> <p>4 Q At the time what was your understanding of</p> <p>5 how they would be issued?</p> <p>6 MR. CADIGAN: Again, the idea is that</p> <p>7 you want to get the facts. You want to ask her the</p> <p>8 factual question -- to get her understanding of these</p> <p>9 things I think is a little different. So I mean, I'm</p> <p>10 going to instruct her not to answer questions with</p> <p>11 respect to her understanding regarding her reading of</p> <p>12 the Munchee order and those materials.</p> <p>13 MR. SCHLEGELMILCH: What was the Kin tokens</p> <p>14 utility at the time of offering?</p> <p>15 THE WITNESS: It could be used by anyone</p> <p>16 that owned it to purchase any kinds of goods and</p> <p>17 services from anyone that would accept it.</p> <p>18 MR. SCHLEGELMILCH: At the time of</p> <p>19 offering?</p> <p>20 THE WITNESS: At the time of offering,</p> <p>21 sure. And it was able to provide for people who were</p> <p>22 participants in the Kik platform could obtain a certain</p> <p>23 level of status and obtain certain premium content.</p> <p>24 MR. SCHLEGELMILCH: At the time of the</p> <p>25 offering, how many users accepted Kin tokens?</p>

<p>Page 130</p> <p>1 You said that it could be used to -- in 2 exchange for goods or services. How many goods or 3 services were available at the time of offering?</p> <p>4 THE WITNESS: I have no idea how many 5 because it's a decentralized ecosystem. Anyone could 6 have accepted it, and I wouldn't necessarily know.</p> <p>7 There were transactions on the blockchain 8 fairly soon after the token offering was completed, and 9 I, don't have any way of knowing whether those were you 10 know person to person, person to business. I don't -- 11 there's really no way for me to have insight into that.</p> <p>12 MR. SCHLEGELMILCH: Are you aware of -- I'm 13 asking your personal awareness. Are you aware of any 14 user that accepted Kin tokens at the time of the 15 offering, any specific user?</p> <p>16 THE WITNESS: I am aware of businesses that 17 accepted Kin tokens subsequent to the offering.</p> <p>18 MR. SCHLEGELMILCH: Okay. At the time of 19 the offering?</p> <p>20 THE WITNESS: At the time of the offering, 21 there was no -- you know, until the offering occurred, 22 there was no currency to accept so --</p> <p>23 MR. SCHLEGELMILCH: Offering plus one 24 second?</p> <p>25 MR. CADIGAN: Do you know?</p>	<p>Page 132</p> <p>1 Q Okay. And that's in 2018? 2 A I think so. 3 Q And at the time of the offering, had either 4 the sunglasses company -- at the time of the token 5 distribution event, had the sunglasses company told the 6 public or told anyone that they were going to accept 7 Kin for sunglasses? 8 A I have no idea. We weren't aware of it. 9 Q Okay. What about the car dealer, were you 10 aware -- 11 A The same. I don't know if they did or not, 12 but we weren't aware of it. I wasn't aware of it. 13 Q And the MUN tokens that Munchee proposed, 14 could those have been used to buy goods or services 15 from someone who would have accepted MUN tokens? 16 A I don't know. My understanding is that 17 they were never actually issued. So whether they were 18 usable or not is -- 19 Q But if there was a token -- if there was 20 just a token on a blockchain, couldn't they be used to 21 buy or sell goods or services or at least to buy goods 22 or services if someone is willing to accept it? 23 A Well, I suppose that's possible. 24 Q So is -- 25 A But I don't know. It's not a token that I</p>
<p>Page 131</p> <p>1 THE WITNESS: I don't know. 2 MR. SCHLEGELMILCH: Thank you. 3 BY MR. MITCHELL:</p> <p>4 Q Are you aware of anyone who, say, in the 5 first month after the offering accepted Kin tokens for 6 goods and services?</p> <p>7 A I don't know what the time frame is, but I 8 do know that somebody accepted Kin tokens for the 9 purchase of glasses, and I know that some of those 10 glasses were, in fact, purchased using Kin tokens.</p> <p>11 I also am aware of an automobile dealership 12 that accepted Kin tokens, but I don't know if there 13 were any purchases made.</p> <p>14 Q What year was the glasses sale?</p> <p>15 A I don't know.</p> <p>16 Q Do you think it was 2017?</p> <p>17 A I don't know. It was between then and now.</p> <p>18 Q Sure. But sometime between September of 19 2017 and today?</p> <p>20 A Yes.</p> <p>21 Q But you don't know when?</p> <p>22 A I don't. It was -- I'm going to say it was 23 before consensus, which whenever that occurred because 24 when I was at the New York office, there was a pair of 25 those sunglasses sitting there.</p>	<p>Page 133</p> <p>1 have any interaction with. So I don't know -- I mean, 2 you guys were the ones that wrote that it had no 3 utility in your enforcement order so --</p> <p>4 Q Oh, is this -- is that this sentence in 5 particular, "The MUN tokens had no current utility at 6 the time of the offering," that's based on the SEC 7 order?</p> <p>8 A I believe so.</p> <p>9 Q Anything else?</p> <p>10 A I wouldn't have any independent knowledge. 11 I was just distinguishing the order and the enforcement 12 action from the situation that we were in.</p> <p>13 Q So you were using the term "no current 14 utility" to mean what the Commission meant it meant in 15 the order?</p> <p>16 A I don't know what I meant. I've got to -- 17 I've got to say -- I mean, it says what it says. And I 18 know about the characteristics of the MUN token from 19 what I read in the enforcement order and what I read in 20 the white paper.</p> <p>21 Q Anything else?</p> <p>22 A I don't have any personal knowledge of the 23 MUN token otherwise.</p> <p>24 Q Did you --</p> <p>25 A I don't think I expressed that I had any</p>

<p style="text-align: center;">Page 134</p> <p>1 personal knowledge of the MUN token other than from 2 what I read in those documents.</p> <p>3 Q Did you have any reason to think at the 4 time you wrote this that MUN tokens couldn't be 5 exchanged between people?</p> <p>6 A I don't have any recollection of what I 7 thought about MUN tokens other than what I've written 8 there.</p> <p>9 Q So -- but at the time that you wrote this, 10 did you have any reason to think that MUN tokens were 11 restricted in some way that people couldn't exchange 12 them on the blockchain?</p> <p>13 A As I said, at the time I wrote this, I was 14 aware that MUN tokens had been -- that the token 15 offering had been withdrawn and there were no MUN 16 tokens actually issued. So whether or not they were 17 usable on the blockchain is speculative and I can't 18 answer that.</p> <p>19 Q Okay. But, again, at the time, did you 20 have any reason to believe that MUN tokens were 21 restricted -- couldn't be exchanged between two people 22 when you wrote this?</p> <p>23 A I think I answered that question already.</p> <p>24 Q Please. I didn't understand it then. If 25 you could just --</p>	<p>1 a restriction on them or not.</p> <p>2 All I know about the MUN tokens is what I 3 read about them in the enforcement action in the 4 statement of facts that the SEC provided and what I 5 read about them in the white paper in which they were 6 described.</p> <p>7 I have no personal knowledge of the MUN 8 tokens and any restrictions about them. I didn't look 9 at their smart contract. I don't know if they were 10 issued on the Ethereum blockchain or not.</p> <p>11 MR. MURTHA: Oh, you used the term premium 12 content earlier.</p> <p>13 What premium content were you referring to?</p> <p>14 THE WITNESS: Special digital content in 15 the form of stickers. Stickers are a thing that many 16 people use in digital communications to express their 17 emotions. And so there were special stickers and 18 other -- well, I guess it was just stickers at the time 19 that were available.</p> <p>20 BY MR. MITCHELL:</p> <p>21 Q If I can take you to the second paragraph 22 on the page that ends in 004.</p> <p>23 A Yeah.</p> <p>24 Q The first part of that paragraph reads, 25 "Unlike Munchee, whose restaurant review application</p>
<p style="text-align: center;">Page 135</p> <p>1 A Could you read it back, please?</p> <p>2 MR. MITCHELL: Please read it back.</p> <p>3 (Record read.)</p> <p>4 THE WITNESS: Prior to that, I made a 5 statement. Can you please read that back?</p> <p>6 BY MR. MITCHELL:</p> <p>7 Q Actually, what I'd like you to do is just 8 answer. She's read you back the question. Please just 9 answer the question.</p> <p>10 A I did answer the question, and I want to 11 make sure that I don't answer it inconsistently with 12 what I already answered. If there's something I can 13 add, I'll try and add it.</p> <p>14 (Record read.)</p> <p>15 BY MR. MITCHELL:</p> <p>16 Q But I'm just asking you a yes-or-no 17 question.</p> <p>18 Did you have any reason to think that the 19 MUN tokens that you describe in this letter to 20 O'Melveny & Myers were not -- couldn't -- were somehow 21 restricted and could not be exchanged between two 22 people on the blockchain?</p> <p>23 A I think that that was what I had previously 24 answered which is that they were never, in fact, 25 deployed and so I don't have any idea whether there was</p>	<p style="text-align: center;">Page 137</p> <p>1 didn't even exist, at the time of the Kin TDE, Kik was 2 one of the world's most popular messaging platforms 3 with 300 million registered users and 15 million 4 monthly active users."</p> <p>5 Do you see where I read that?</p> <p>6 A Yes.</p> <p>7 Q So was it true at the time that Kik was -- 8 the Kik messaging app was one of the world's most 9 popular messaging platforms?</p> <p>10 A That is my understanding from discussions 11 with our product people and marketing people. That 12 is -- I didn't independently verify that.</p> <p>13 Q And was it true that Munchee's restaurant 14 review application didn't even exist?</p> <p>15 A That was what I read in the enforcement 16 action.</p> <p>17 Q Did you do anything to check that?</p> <p>18 A No.</p> <p>19 Q So you're just relying on the order?</p> <p>20 A Yes.</p> <p>21 Q And if the order said something different?</p> <p>22 A Well, if it said something different, then 23 maybe I was mistaken.</p> <p>24 Q Okay. The bottom of that same paragraph.</p> <p>25 A Uh-huh.</p>

<p style="text-align: right;">Page 138</p> <p>1 Q Actually, you've already answered that 2 question. I don't need to ask that. There's a -- I'm 3 going to take you down to the part that says, 4 "munchee's marketing focused on" at the bottom. 5 Do you see the last paragraph on that same 6 page? 7 A Yes. 8 Q "Munchee marketing focused on the 9 appreciation of tokens." 10 A Yes. 11 Q And then there is text and then at the 12 bottom -- not on the bottom. It says -- actually, on 13 the next page it starts off, "Kik, on the other hand, 14 made no statements of this nature." 15 Do you see where I read that? 16 A Uh-huh. 17 Q What's the nature that you're talking 18 about, that Kik, on the other hand, made no statements 19 of this nature? 20 A Statements that discuss potential price 21 appreciation of the tokens over time as the proposed 22 money ecosystem would include opportunities for earning 23 tokens and spending tokens and create value as more 24 users adopted the platform. And I believe that there 25 were statements that were made in the offering </p>	<p style="text-align: right;">Page 140</p> <p>1 Q Do you mention that in here, in the 2 Exhibit 142? 3 A Do I? I don't know. I don't see it. 4 Look, this was my analysis given to O'Melveny for the 5 purpose of listing the token to try and distinguish our 6 token from Kin, our token from MUN. And they could 7 accept it or not accept it. They could have poked 8 holes in it. 9 I'm not the judge that gets to decide this, 10 but this was my reasoned analysis and if it's crap, 11 it's crap. But, you know, this is what I wrote. 12 Q That's great. I'm just asking a question. 13 I'm trying to understand it. I'm not -- I completely 14 understand -- 15 A Well, what you're trying to understand are 16 thoughts in my head. 17 MR. GIBBS: You're arguing with 18 the witness. 19 (Simultaneous speakers.) 20 THE WITNESS: You can read it and tell me 21 what you think. But you can't ask what was in my mind 22 when I wrote it. 23 BY MR. MITCHELL: 24 Q I didn't. I asked if you had mentioned -- 25 we discussed something and -- </p>
<p style="text-align: right;">Page 139</p> <p>1 marketing materials about a 199 percent return for 2 early investors. 3 Q That's in the Munchee market? 4 A Right. We didn't make statements like 5 that. 6 Q So Kik didn't make statements about ways 7 that the Kin token would appreciate in value? 8 A I would have to refer to the white paper 9 and other statements. The statements were made before 10 I got there. So I'm not sure what the context was 11 frankly. 12 Q What? 13 A I'm not trying to be cute. I just -- I 14 don't want to speak on behalf of somebody else who made 15 those statements. 16 Q What statements are you thinking about? 17 A Any statements that related to the value 18 proposition of the Kik -- of the Kin tokens. 19 Q So -- sorry. People at Kik did make 20 statements about the value proposition? 21 A I know there were statements made in the 22 white paper that relate to the scarcity of the token 23 and that over time, the value of the tokens was 24 expected to increase as a result of the use of the 25 token in the ecosystem. </p>	<p style="text-align: right;">Page 141</p> <p>1 A Well, then you can read it and see if it's 2 there. 3 Q I agree. 4 A Okay. 5 Q I'm asking you: Is it here? 6 A Well, I'd have to sit here and reread it. 7 So let me do that. 8 Q Okay. 9 A If you think that's worth everyone's time. 10 MR. GIBBS: I certainly don't because 11 you're asking her -- 12 (Simultaneous speakers.) 13 MR. MURTHA: Hang on a second. Can you 14 please take your mic off and leave the room for a 15 second. 16 (Whereupon, the witness was excused.) 17 MR. MURTHA: So if you're going to say 18 anything other than objections on the basis of some 19 sort of privilege, we're going to excuse the witness 20 every single time. 21 You're interrupting Brent's ability to ask 22 questions. He's asking reasonable questions. And what 23 you're doing is inappropriate. 24 MR. GIBBS: I disagree that they're 25 reasonable questions. You've asked her now probably a </p>

<p style="text-align: right;">Page 142</p> <p>1 dozen questions that you know the answer to, right? 2 All you're doing is a little, like, mock 3 cross-examination of her and arguing with her about her 4 legal distinctions.</p> <p>5 I presented to you guys in this room a deck 6 drawing a lot of the same distinctions between Munchee 7 and this case. Am I going to get a subpoena? Are you 8 going to cross-examine me about my legal analysis of 9 the Munchee order?</p> <p>10 MR. MITCHELL: She's here because she 11 submitted the application to Bittrex, and we're trying 12 to understand the application.</p> <p>13 MR. GIBBS: You're not trying to understand 14 it. You know what it says. I understand the arguments 15 you're laying out with your questions, but this isn't 16 investigative. You're not asking her for information 17 you don't know. Okay? You're arguing with her.</p> <p>18 MR. LEASURE: I think we can have a 19 counsel-to-counsel discussion outside of the presence 20 of the witness about the merits of investigative steps 21 we're taking. I think our only point here is that 22 during the course of an examination, these may 23 appear -- at least they don't appear to us to be 24 appropriate objections during the examination of the 25 witness.</p>	<p>1 A No. 2 Q Okay. Two more questions about this 3 document. On the top of the page that has a 5, Bates 4 number 5. 5 A Okay. 6 Q We were reading the first sentence before. 7 The second sentence says, "Kin was marketed as a 8 product with utility." 9 I guess what was the marketing -- how was 10 Kin marketed as a product with utility? 11 A I believe that in the Kin white paper it 12 discussed how Kin tokens would be used in an ecosystem 13 for digital services. 14 Q Are those the use cases in the white paper? 15 A There were some use cases in the white 16 paper. 17 Q So that's the utility in the marketing? 18 A That's utility that was, I guess, marketing 19 the white paper, so -- but I'm not saying that that was 20 the only utility. 21 Q Was there any other utility that was 22 marketed -- that was marketed that Kin would have this 23 utility? 24 A I did not write the white paper and I'm not 25 on the product development or technical side, so I</p>
<p style="text-align: right;">Page 143</p> <p>1 MR. GIBBS: Then we're not during the 2 examination anymore. 3 MR. MURTHA: That's why I asked her to 4 leave. 5 MR. GIBBS: That's fine. I didn't object 6 to you guys asking her to leave. That's fine. 7 MR. LEASURE: If you have objections to the 8 form of the examination questions that we're doing 9 here, you know, obviously, we want to respect the 10 privilege. 11 But other than that, we have some concerns 12 about objections during the course of the examination. 13 MR. GIBBS: You've said it. That's fine. 14 MR. LENCH: Can we go off the record now? 15 I think -- let's take a break. 16 MR. MITCHELL: All right. Sure. 17 THE VIDEOGRAPHER: Going off the record. 18 The time on the video monitor is 1:13 p.m. 19 (A brief recess was taken.) 20 THE VIDEOGRAPHER: We are back on the 21 record. The time on the video monitor is 1:24 p.m. 22 BY MR. MITCHELL: 23 Q During the break, did you have any 24 substantive conversations with the staff about the 25 case?</p>	<p>1 really don't have an answer for that question as to 2 what else there might be. 3 Q Oh, sorry. But I meant more on the 4 marketing. 5 If Kin was marketed as a product with 6 utility, was there -- did Kik do marketing or did 7 anyone do marketing for Kin for utility other than 8 those use cases in the white paper? 9 A Not that I'm aware of. 10 MR. LEASURE: How was this document 11 prepared? 12 THE WITNESS: How was this document 13 prepared? 14 MR. LEASURE: Let me ask that in English 15 this time around. Who wrote this? 16 THE WITNESS: I probably wrote this. 17 MR. LEASURE: Did anyone help you? 18 THE WITNESS: I consulted with outside 19 counsel. 20 MR. LEASURE: Which outside counsel? 21 THE WITNESS: Cooley. 22 MR. LEASURE: Anyone else? 23 THE WITNESS: Some of the language in here 24 I believe I captured from some information about the 25 Kin rewards engine that I did not write. But I don't</p>

<p>Page 146</p> <p>1 know who wrote that.</p> <p>2 MR. LEASURE: And that's what I was going 3 to ask.</p> <p>4 Did you consult with any business people 5 who wrote the white paper or other documents?</p> <p>6 THE WITNESS: I didn't consult with them. 7 I just looked at what they wrote and used that.</p> <p>8 MR. LEASURE: Sure.</p> <p>9 MR. MENDEL: Different subject slightly. I 10 want to go back to the token distribution event in 11 September.</p> <p>12 THE WITNESS: Okay.</p> <p>13 MR. MENDEL: And I really just want to walk 14 through the mechanics of it.</p> <p>15 Were you yourself familiar with how 16 purchasers could sign up and get Kin through public 17 sale?</p> <p>18 THE WITNESS: I am familiar because I did 19 it myself.</p> <p>20 MR. MENDEL: Were you familiar for any 21 other reasons?</p> <p>22 THE WITNESS: I am not sure I understand 23 your question.</p> <p>24 MR. MENDEL: Did you help set up the 25 process?</p>	<p>Page 148</p> <p>1 gas, which is the fee payable to ether.</p> <p>2 And then I just waited until the Kin was 3 returned to me via the blockchain into a private -- 4 into my public address. And then I believe I moved 5 that from the public address into a private account so 6 that it was off chain. I didn't want it -- I moved it 7 to a cold wallet. I didn't want it to be in a hot 8 wallet. My little amount of money I didn't want to 9 lose.</p> <p>10 MR. MENDEL: I'm providing you what has 11 been previously marked as Exhibits 8 and 9.</p> <p>12 THE WITNESS: Okay.</p> <p>13 MR. MITCHELL: Eight is the terms of use 14 agreement.</p> <p>15 It says that on its face. And 9 on its 16 face user registration guide.</p> <p>17 MR. MENDEL: I just want to wind back up 18 and start from when you accessed the website in order 19 to register.</p> <p>20 Did you -- were you presented with 21 Exhibit 8 or Exhibit 9 first?</p> <p>22 THE WITNESS: I couldn't tell you.</p> <p>23 MR. MENDEL: One other question. You 24 encountered both of these documents during the 25 registration process?</p>
<p>Page 147</p> <p>1 THE WITNESS: I did not.</p> <p>2 MR. MENDEL: Okay. So your knowledge is 3 based on what you went through as a user?</p> <p>4 THE WITNESS: Yes.</p> <p>5 MR. MENDEL: And can you just at a high 6 level kind of walk through what you needed to do to buy 7 the Kin in terms of going on the website and just going 8 through the process?</p> <p>9 THE WITNESS: My recollection is that I had 10 to fill out a registration form, provide some 11 information about myself, probably my social security 12 number. The amount that I bought was small, so I don't 13 believe I had to provide a passport, but I might have.</p> <p>14 And then on -- I read -- I read the user 15 registration form.</p> <p>16 I followed the instructions about 17 how to acquire ether. So I set up an account with 18 something, but I don't know. It was one of the coins, 19 coin this or that. It's coin -- coin base, something.</p> <p>20 And I sent money from my Chase bank account 21 to that account to purchase ether. And then when the 22 date of the sale came around, there was some 23 instructions about how to set it up so that the 24 ether -- so that I committed to purchase a certain 25 amount of Kin and the ether would be sent minus some</p>	<p>Page 149</p> <p>1 THE WITNESS: I don't recall.</p> <p>2 MR. MENDEL: Did you help draft either of 3 these documents?</p> <p>4 THE WITNESS: I did not draft the user 5 registration guide, and I did not review the user 6 registration guide.</p> <p>7 The terms of use agreement was prepared by 8 outside counsel, and I was asked to review it which I 9 did.</p> <p>10 But I frankly didn't have much to say about it 11 because it's not something that I have worked with in 12 my past career.</p> <p>13 So this was a new kind of thing. In 14 terms of use agreements, I didn't really know what they 15 looked like, so I didn't have much to contribute.</p> <p>16 MR. MENDEL: Did you come across the terms 17 of use agreement during the initial registration phase?</p> <p>18 THE WITNESS: I don't recall specifically. 19 I imagine I would have because I've never accessed a 20 website in my life that didn't have an accept terms of 21 use.</p> <p>22 MR. MENDEL: And the terms of use agreement 23 that you came across when you registered had a link to 24 the white paper which is reflected on the first page of 25 Exhibit 8?</p>

<p style="text-align: center;">Page 150</p> <p>1 THE WITNESS: As I said, I don't recall 2 specifically coming across this. I presume I did. I 3 can see that there's what appears to be a link, but I 4 can't say for certain if that is a link.</p> <p>5 I know that I have gone to the website and 6 linked to the white paper, but whether that was 7 something I had done in my personal purchase of Kin, I 8 don't know. I can't say.</p> <p>9 MR. MENDEL: Do you have any reason to 10 think that the white paper wasn't available by link at 11 the time that you registered?</p> <p>12 THE WITNESS: No, I have no reason to 13 believe it was not available.</p> <p>14 MR. MENDEL: And do you think that you went 15 through the user registration guide at the time that 16 you registered that's reflected in Exhibit 8 -- I'm 17 sorry -- Exhibit 9?</p> <p>18 THE WITNESS: I'm pretty sure I read this 19 very carefully because otherwise I wouldn't have 20 figured out how to do it.</p> <p>21 MR. MENDEL: And besides Exhibit 8 and 22 Exhibit 9, do you recall any other steps that you were 23 required to take during the registration phase?</p> <p>24 THE WITNESS: Well, as I mentioned, I had 25 to arrange with my bank to send money to somebody to</p>	<p style="text-align: center;">Page 152</p> <p>1 was prepared by outside counsel. But there were others 2 that had been prepared prior to my getting there that I 3 didn't really have any involvement in.</p> <p>4 MR. MENDEL: You mentioned the Kik site, 5 the Kin site, and the Kin Digital Services site?</p> <p>6 THE WITNESS: I don't actually know if Kin 7 Digital Services had a site, but I know that I've seen 8 terms of service that referred to Kin Digital Services.</p> <p>9 MR. MENDEL: Did you have to go to the Kik 10 site and the Kin site in order to register?</p> <p>11 THE WITNESS: I don't remember. I probably 12 went to this Kin.Kik.com.</p> <p>13 MR. MENDEL: Do you recall any other steps 14 that you took that you haven't discussed?</p> <p>15 THE WITNESS: I don't recall any other 16 steps.</p> <p>17 MR. LEASURE: We saw earlier in one of 18 those exhibits that in response to a request from an 19 exchange you provided the Blakes letter, Kik's 20 communication to the Ontario regulators, right?</p> <p>21 THE WITNESS: Correct.</p> <p>22 MR. LEASURE: And that was -- in that 23 instance Kik did not provide a memo or other advice 24 that Kik may have received from Cooley or another law 25 firm?</p>
<p style="text-align: center;">Page 151</p> <p>1 purchase ether.</p> <p>2 I don't think I did anything else. I 3 did purchase a cold storage wallet from Amazon.</p> <p>4 MR. MENDEL: You don't recall any other 5 documents that you were asked to agree to as part of 6 the process?</p> <p>7 THE WITNESS: I don't recall even agreeing 8 to this as part of the process but --</p> <p>9 MR. MENDEL: So there was nothing else?</p> <p>10 THE WITNESS: I don't know. I can't 11 recall.</p> <p>12 MR. MENDEL: Do you recall any other 13 disclosures that were provided by Kik as part of the 14 registration process?</p> <p>15 THE WITNESS: I do know that there were 16 different terms of use agreements that were prepared 17 for various different things. So Kik had a terms of 18 use.</p> <p>19 The Kin website had a terms of use. There was 20 something for Kin Digital Services that had terms of 21 use. But I can't say for certain how they were 22 relating to one another.</p> <p>23 I do recall that just before the token 24 distribution event occurred that one of the terms of 25 use had to be updated and that was what I reviewed that</p>	<p style="text-align: center;">Page 153</p> <p>1 THE WITNESS: We did not provide that 2 advice to an exchange.</p> <p>3 MR. LEASURE: So that's what I'm going -- 4 you're anticipating what I'm going to ask you.</p> <p>5 THE WITNESS: No, I don't know what you're 6 going to ask.</p> <p>7 MR. LEASURE: Did Kik ever -- did Kik ever 8 provide to any exchange memoranda containing legal 9 advice provided by Cooley to Kik?</p> <p>10 THE WITNESS: I hope not because we were 11 advised not to do that.</p> <p>12 MR. LEASURE: Did Kik ever provide to any 13 third party, leaving aside even more than just 14 exchanges, anyone outside of Kik, did Kik ever provide 15 memoranda or legal analysis prepared by Cooley?</p> <p>16 THE WITNESS: I don't know if we did. I 17 hope we didn't.</p> <p>18 MR. LEASURE: You have not?</p> <p>19 THE WITNESS: I don't believe I have.</p> <p>20 MR. LEASURE: Have you ever told any third 21 party outside of Kik the -- what legal advice Kik may 22 have received in advance of the token distribution 23 event?</p> <p>24 THE WITNESS: I believe in general terms.</p> <p>25 MR. LEASURE: What can you tell me about</p>

<p style="text-align: center;">Page 154</p> <p>1 that?</p> <p>2 THE WITNESS: Just the conclusion that Kin 3 was not a security.</p> <p>4 MR. LEASURE: Anything beyond that?</p> <p>5 THE WITNESS: Nothing specific that I can 6 remember.</p> <p>7 MR. LEASURE: Do you know who?</p> <p>8 THE WITNESS: No, I don't know who.</p> <p>9 MR. LEASURE: I'm -- let me ask that in a 10 better way.</p> <p>11 THE WITNESS: Yeah.</p> <p>12 MR. LEASURE: What third parties that might 13 have been communicated through?</p> <p>14 THE WITNESS: As I mentioned, the exchanges 15 that were, you know, interested in that issue. 16 Silvergate was interested in that issue, you know, as 17 was the other bank in Canada, other counsel, counsel 18 for the foundation.</p> <p>19 MR. LEASURE: Okay. So to make sure I 20 understand, for the exchanges and other -- and banks 21 who might have been interested, you told them that -- 22 at the top line that Cooley had provided legal advice, 23 correct?</p> <p>24 THE WITNESS: We had sought legal advice 25 from a number of advisors --</p>	<p style="text-align: center;">Page 156</p> <p>1 specifically asked for my advice on that topic.</p> <p>2 MR. LEASURE: Okay. Is that a -- from your 3 knowledge is that a serious proposal or just something 4 being discussed or considered?</p> <p>5 THE WITNESS: I don't know whether it was 6 serious or not.</p> <p>7 MR. LEASURE: I think you may have 8 anticipated this, but is there a way to do that?</p> <p>9 THE WITNESS: I don't know.</p> <p>10 MR. LEASURE: That's fair.</p> <p>11 MR. MENDEL: Just a quick followup on the 12 line of questions I was asking.</p> <p>13 I think you said you didn't really have a 14 direct role in organizing the website for registration; 15 is that right?</p> <p>16 THE WITNESS: Right.</p> <p>17 MR. MENDEL: Who at Kik did?</p> <p>18 THE WITNESS: You know, I don't know who 19 sets up the website. I'm -- I imagine -- I don't know. 20 There's a lot of people who work on different aspects. 21 For some reason I think that our communications group 22 in New York had something to do with the website.</p> <p>23 MR. MENDEL: Did you have a point of 24 contact for this project in terms of them sending you 25 things to look at?</p>
<p style="text-align: center;">Page 155</p> <p>1 MR. LEASURE: And you told --</p> <p>2 THE WITNESS: -- and our conclusion was 3 that Kin was not a security under applicable law.</p> <p>4 MR. LEASURE: But the underlying 5 analysis --</p> <p>6 THE WITNESS: Was not provided.</p> <p>7 MR. LEASURE: To any of those parties?</p> <p>8 THE WITNESS: Not to my knowledge.</p> <p>9 MR. LEASURE: Okay. Shifting gears.</p> <p>10 THE WITNESS: Okay.</p> <p>11 MR. LEASURE: Is Kik considering 12 withdrawing the Kin project from the United States?</p> <p>13 THE WITNESS: I've heard that's a 14 possibility. I don't think it's a real possibility, 15 but, you know, I'm not the decider of that.</p> <p>16 MR. LEASURE: I want to obviously because 17 of your -- because you're a lawyer working for Kik, I 18 want to be careful.</p> <p>19 In what context did you hear about that?</p> <p>20 THE WITNESS: Just kind of general 21 conversations with the executive team or the board.</p> <p>22 MR. LEASURE: Were you being asked for 23 legal advice on the topic of whether Kik should 24 withdraw the Kin project from the United States?</p> <p>25 THE WITNESS: It wasn't -- no, I wasn't</p>	<p style="text-align: center;">Page 157</p> <p>1 THE WITNESS: I know that I was in contact 2 with Ronaldo Clifton.</p> <p>3 MR. MENDEL: Anybody else?</p> <p>4 THE WITNESS: Maybe Rod McLeod.</p> <p>5 MR. MENDEL: Are they both in New York?</p> <p>6 THE WITNESS: Ronaldada is no longer with the 7 company, but Rod is in New York.</p> <p>8 MR. MENDEL: And was Ronaldo Clifton -- do 9 I have that right?</p> <p>10 THE WITNESS: Ronaldada.</p> <p>11 MR. MENDEL: Ronaldada, was she in New York?</p> <p>12 THE WITNESS: She was in New York, uh-huh.</p> <p>13 MR. MENDEL: And were they both in the 14 communications group?</p> <p>15 THE WITNESS: Rod is. He's kind of our 16 communications director. And I don't know what 17 Ronaldada's role was. She might have been -- I don't 18 know what her role was.</p> <p>19 BY MR. MITCHELL:</p> <p>20 Q Was her role within the broader marketing 21 group?</p> <p>22 A I don't even know that frankly. I don't 23 even know who she reported to. I was really new, and I 24 was still trying to sort people out.</p> <p>25 MR. MENDEL: I think you said that you</p>

<p style="text-align: center;">Page 158</p> <p>1 refer -- you reviewed at least one version of the terms 2 of use agreement?</p> <p>3 THE WITNESS: I did.</p> <p>4 MR. MENDEL: Who sent you that to review?</p> <p>5 THE WITNESS: A lawyer at Cooley, Diane 6 Savage.</p> <p>7 Is there a Diane Savage? Yes. Brett is 8 saying yes. I think she was the one that sent it to 9 me.</p> <p>10 MR. MENDEL: Did you interact with anyone 11 at Kik about the terms of use agreement?</p> <p>12 THE WITNESS: I interacted with Michelle 13 Dent, my paralegal, and Ronald Clifton about that.</p> <p>14 MR. MENDEL: Thank you.</p> <p>15 THE WITNESS: Tanner Philp also.</p> <p>16 MR. MENDEL: Anybody else?</p> <p>17 THE WITNESS: Not that I can think of.</p> <p>18 MR. MITCHELL: Thank you for coming. We 19 don't have any more questions for you today. We really 20 do appreciate it.</p> <p>21 It is actually really helpful to us.</p> <p>22 If we have any other questions in the future, we'll 23 talk to Cooley and Kirkland and get back to you.</p> <p>24 At the end of these, we always give the 25 witness an opportunity if there was anything that you</p>	<p style="text-align: center;">Page 160</p> <p>1 PROOFREADER'S CERTIFICATE</p> <p>2</p> <p>3 In the Matter of: KIK INTERACTIVE</p> <p>4 Witness: Eileen Lyon</p> <p>5 File Number: HO-13388-A</p> <p>6 Date: Thursday, August 30, 2018</p> <p>7 Location: Washington, D.C.</p> <p>8</p> <p>9 This is to certify that I, Christine Boyce, 10 (the undersigned) do hereby swear and affirm that the 11 attached proceedings before the U.S. Securities and 12 Exchange Commission were held according to the record, 13 and that this is the original, complete, true and 14 accurate transcript, which has been compared with the 15 reporting or recording accomplished at the hearing.</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 (Proofreader's Name) (Date)</p> <p>20</p>
<p style="text-align: center;">Page 159</p> <p>1 wanted to correct or amend or supplement.</p> <p>2 Is there anything that we asked that you 3 want to amend or correct or supplement your answers to?</p> <p>4 THE WITNESS: I don't think of anything 5 that I am not comfortable with, but --</p> <p>6 MR. MITCHELL: Sounds good. And we also --</p> <p>7 MR. CADIGAN: No questions. Nothing 8 further.</p> <p>9 MR. MITCHELL: Then we will go off the 10 record.</p> <p>11 THE VIDEOGRAPHER: This concludes today's 12 video deposition. This is disc two of two. Going off 13 the record. The time is now 1:43 p.m.</p> <p>14 (Whereupon, at 1:43 p.m., the examination 15 was concluded.)</p> <p>16 * * * * *</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">Page 161</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 I, Melinda Johnson, CSR, reporter, hereby 4 certify that the foregoing transcript of 159 pages is a 5 complete, true and accurate transcript of the testimony 6 indicated, held on Thursday, August 30, 2018, at 7 Washington, D.C. in the matter of: Kik Interactive.</p> <p>8</p> <p>9 I further certify that this proceeding was 10 recorded by me, and that the foregoing transcript has 11 been prepared under my direction.</p> <p>12 Date: _____</p> <p>13</p> <p>14 Official Reporter: _____</p> <p>15 Diversified Reporting Services, Inc.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>